IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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| RETRACTABLE TECHNOLOGIES INC. | * | Civil Docket No. |
| | * | 2:07-CV-250 |
| VS. | * | Marshall, Texas |
| | * | |
| | * | November 4, 2009 |
| BECTON DICKINSON & COMPANY | * | 1:30 P.M. |

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography, transcript produced on CAT system.)

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* * * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

You may continue cross-examination.

MR. DAWSON: Thank you, Your Honor.

WALTER BRATIC, PLAINTIFF'S WITNESS, SWORN

CROSS-EXAMINATION CONTINUED

BY MR. DAWSON:

Q. Mr. Bratic, before lunch we were talking about

paid-up royalties versus running royalties.
Do you remember that?
A. I do.
Q. A paid-up royalty, you pay all upfront; running royalty, you pay as you go, correct?
A. Correct.
Q. And I think just to refresh your memory and refresh everyone's memory, RTI has never done a fully paid-up royalty, correct?
A. Not that I'm aware of.
Q. Okay. Now, let's talk about BD.
A. All right.
Q. You would agree with me that BD has never done a fully paid-up royalty?
A. Not from documents I've seen.
Q. Right. You did review some of the BD licenses in this case, did you not, sir?
A. The ones that were produced to me, yes.
Q. And you saw that they were all running royalties, correct?
A. Well, one of them was a royalty-free cross -- a royalty-free license, and then it was renegotiated to be a running royalty later.
Q. Okay. And do you remember, sir, that the royalties -- the highest stated royalty that you saw in

the BD licenses was 5 percent?

A. Stated, yes.

Q. Okay. Now, are you able to identify for us in the syringe industry, one single example of a fully paid-up license?

A. Not from the licenses I saw in this case.

Q. Okay. Are you able to identify for us in the syringe industry one license for $70 million or more?

A. Well, there have been some licenses as a result of litigation that have been in that size range that have been paid-up licenses.

Q. In the syringe industry, sir?

A. Yes. One of them involving BD.

Q. All right, sir. Now, you are aware that RTI went to various manufacturers and said we'd like to do a deal with you, correct?

A. Yes.

Q. They went to a company called Sherwood on several occasions and said we'd like to do a deal with you, correct?

A. I don't recall on how many occasions, but I understand they may have had some discussions. I don't know the nature of them.

Q. And so that the jury will know, Sherwood is a pretty sizeable company that's in the -- in the medical

device industry, correct?
A. Well, Sherwood itself is not; it's part of a huge multibillion-dollar company called Tyco.
Q. But at the time, it was a separate entity and was in the medical device industry, correct?
A. Right.
Q. And they went to Sherwood, and they said you want to license our product; you want to do a deal with us, and Sherwood said no, correct?
A. I don't recall the details whether they offered to license them or asked if they wanted to manufacture their product in collaboration. I don't recall the details.
Q. But in any event, Sherwood said no?
A. Well, no deal was done under whatever terms.
Q. Okay. They went to a company called Terumo; do you remember that?
A. No, I don't.
Q. And you know they went to BD on several occasions?
A. I understand they approached BD or vice versa.
Q. And if we look at a letter dated June 1st, 1999 -- it will come up on your screen -- and let's look at the --
A. Can you blow it up?

Q. Yeah. Let's look at the name and the first paragraph. This is a letter from Jack Page.
Do you understand Mr. Page was a consultant for RTI?
A. Could you go to the bottom of the page?
MR. DAWSON: Let's go to the next page and show the signature, please.
Q. (By Mr. Dawson) Do you see that?
It's a letter from Mr. Page to Mr. Kozy at BD.
Do you see that?
A. Excuse me.
Yes, I see that Mr. Page signed the letter.
Q. Okay.
MR. DAWSON: Go back to the front page, if you would. And let's do the signature line -- I mean, the first paragraph.
There we go.
A. Okay.
Q. (By Mr. Dawson) You see this is dated June 1, 1999?
A. I do.
Q. And it's to Mr. Kozy at Becton Dickinson?
A. Yes.
Q. The man seated right over here to my left?
A. I haven't met him, but my understanding is

he's sitting there.

Q. Okay. And Mr. Page starts off -- and I don't even know if you answered this. You understand Mr. Page was a consultant for RTI?

A. That was my understanding based on testimony based in the courtroom.

Q. Okay. And he says: We last corresponded in early October, at which time you said that the time was not ripe to open discussions between Becton Dickinson and RTI on how they might work together to the mutual benefit of both companies.

Did you see that?

A. Yes.

Q. And then if you look at the last paragraph on Page 2.

MR. DAWSON: Blow up the last paragraph, please.

Q. (By Mr. Dawson) It says -- Mr. Page says: With the change in corporate leadership, RTI is quite willing to talk with you about a program of mutual cooperation.

MR. BOWLES: Your Honor, hearsay.

THE COURT: Sustained. An exhibit? What is this document?

MR. DAWSON: I understood it to be an

exhibit, Your Honor.

MR. BOWLES: Your Honor, I don't think that's a Plaintiff's Exhibit. If I'm wrong on that, then --

MR. DAWSON: Well, let me just deal with one issue and then we can talk about it afterwards.

THE COURT: Very well.

Q. (By Mr. Dawson) You see where Mr. Page says it has no fixed idea of how that might be accomplished.

Do you see that?

A. I do.

Q. Mr. Page doesn't say we would demand a paid-up license, does he?

A. Not there.

Q. Okay. And then -- and you're not aware of Mr. Page ever writing a letter to BD saying we demand a paid-up license?

A. The only letter I've seen from Mr. Page is this one.

Q. Okay. And do you know that Mr. Gary Cohen wrote back to Mr. Page and said -- on June 23rd and said?

MR. BOWLES: Judge, hearsay, Your Honor.

THE COURT: Who's Mr. Cohen?

MR. DAWSON: This is in evidence.

MR. BOWLES: Oh, it is?
MR. DAWSON: Gary Cohen.
THE COURT: What's the exhibit number?
MR. DAWSON: 341, Your Honor.
MR. BOWLES: Defendant's?
MR. DAWSON: Yes.
THE COURT: Very well.
MR. BOWLES: I withdraw the objection, Your Honor.
THE COURT: You may go forward.
Q. (By Mr. Dawson) You're aware that Mr. Cohen wrote back to Mr. Page, June 23rd, 1999, and said:
Thank you for your letter. We're not interested in doing a deal with RTI.
A. No, I'm not specifically aware of that.
Q. Okay.
MR. DAWSON: Let's pull up No. 341, first paragraph, please.
Q. (By Mr. Dawson) You see the letter to Mr. Page dated June 23rd, 1999?
A. I do.
Q. From Gary Cohen, Executive Vice President of Becton Dickinson?
A. Well, that's who's on the stationery at the top of the page.

Q. And he says: I'm answering your letter. And then he goes on to say: I do not think our doing so would be appropriate or in the best interest of BD, its customers, or its shareholders.
Did I read that correctly?
A. Well, that part of it you read correctly.
Q. Okay. Now, you are aware that RTI did do a deal with Abbott, did they not?
A. They did.
Q. And so that the ladies and gentlemen of the jury will know, Abbott is another major company with thousands of employees, correct?
A. It's a very large international medical products and pharmaceutical company.
Q. And they have thousands of employees and have lots of salesmen running around the country, right?
A. I assume they have lots of employees.
Q. And in your report, you show that RTI projected -- and it's on Page 52, if you'd like to look -- RTI projected --
A. I'm sorry. Let me get there.
Q. Okay.
A. If you don't mind.
On Page 52, which paragraph?
Q. It's in the table.

A. Okay.
Q. RTI projected that its sales of its product through Abbott would total $467-some-odd million, correct?
A. Over a number of years, correct.
Q. Yes.
A. Yes.
Q. So they were projecting we're going to sell about half a billion dollars' worth of product to Abbott, correct?
A. Well, not to Abbott. Through Abbott. Abbott was going to be their distributor.
Q. Right. And they were going to be competing. This was a nonexclusive relationship where Abbott would be out there selling in the hospital market, and RTI would be selling in the hospital market, correct?
A. No. I don't understand that to be the case. Abbott had a different distribution channel, which is why VanishPoint wanted to go to them, because VanishPoint couldn't get into hospitals and Abbott could.
Q. RTI was going to continue selling products, correct?
A. Yes, but they were going to sell --
Q. And Abbott would be selling products, correct?

A. I'm sorry. Yes, they would be selling in different channels, which is why Abbott was approached by VanishPoint.
Q. And do you know when they did this -- by the way, they did this deal in May of 2000, the date of your hypothetical negotiation, correct?
A. Let me look at the date.
My -- my report says it was around June 2000.
Q. All right, sir.
A. Which would have been just after the hypothetical.
Q. And you know, sir, that this was not a paid-up agreement with Abbott?
A. No. They were a distributor.
Q. Abbott didn't pay anything like $70 million, did it?
A. No. They were a distributor.
Q. And that agreement only lasted about three years before it was terminated, right?
A. I'm not allowed -- don't know if I am allowed to answer that question.
Q. Okay. Let me change subjects with you, sir, and talk about this SMI deal.
A. Sure.
Q. Now, you know from the testimony --

MR. DAWSON: No, we're okay.
Q. (By Mr. Dawson) You know that that deal never happened, right?
A. That's right.
Q. And haven't you previously testified that a deal that is not executed is not instructive with regard to hypothetical license?
A. That I don't recall the specifics.
MR. DAWSON: May I approach the witness, Your Honor?
Oh, I know I don't have to have it.
Q. (By Mr. Dawson) Let me show you, again, your testimony from the Anascape case. And I'm going to read this and see if this refreshes your memory.
On -- you say question --
A. You want to read into --
Q. The question is, and then you say in the bottom of Paragraph 43, quote: Because of the Atari offer was never executed, I do not consider it to be instructive with regard to the hypothetical license.
Did I read that correctly?
A. Well, you read that part correctly.
Q. Okay. Was that your testimony, sir?
A. Yes.
Q. Was that truthful at the time?

A. It was.

Q. Okay. Now, you understand that RTI has an exclusive license to the Shaw patents, correct?

A. Yes.

Q. And you've told us in your testimony that you consider these Shaw patents to be very valuable.

A. That's my understanding they are.

Q. And so I take it, it would follow that the RTI exclusive license would be a valuable asset.

A. It would be.

Q. Okay. Do you know, sir, that RTI values these patents at approximately $500,000?

A. I don't recall specifically.

MR. DAWSON: Let's pull up 221, please.

Let's go to Page 32 first and blow up the entry for intangible assets.

No, that's not it. You told me to call out Page 32, and that's what I'm calling out.

Okay. Go to the column for intangible assets, please.

Q. (By Mr. Dawson) And so that we can all understand, this is a filing that is made with the Securities and Exchange Commission?

A. It is.

Q. It's --

A. I didn't see the first page.
Q. First page is a 10-K for the period ending 12/31/01.
A. Okay.
Q. And we've heard testimony from Mr. Shaw, when you file things with the SEC, you'd better be truthful and accurate, right?
A. Correct.
Q. You can get in big trouble if you tell lies in these documents you file with the SEC.
A. You can get penalized and sanctioned.
Q. All right. And RTI is reporting for the year ending 2000, the value of the patents that it owns or the intangible assets, and it's $529,000.
Do you see that?
A. Well, that's not true.
Q. Do you see where it says intangible assets and deferred charges, $529,803?
A. I see that, but your comment is not true.
Q. Okay. Do you see -- it says that.
Now, let's look at what the -- what is included in intangible assets.
MR. DAWSON: And if we'll go to Page 42, please.
If you blow up that section that says

intangible assets.
Q. (By Mr. Dawson) It references under intangible assets, license agreements, trademarks and patents, and loan origination fees.
Do you see that, sir?
A. I do.
Q. All right, sir. Now if you look at Exhibit 205, which is a 10-K for the period ending 2008.
Have you seen that document, sir?
A. I'm sure I have one time or another.
Q. Okay. And -- and that would be during the pendency of this lawsuit, would it not, sir?
A. The lawsuit was filed in July -- I believe June or July of 2007.
Q. All right.
A. So, yes, it would be.
Q. Let's go to what's shown as Page --
A. I'm sorry. What's the date of that 10-K?
Q. This one is --
A. For the year ending when?
Q. For the fiscal year ending 12/31/2008.
A. Thank you.
Q. And then if you go to the pages -- on my deal it shows 31 of 84.
Do you see where the intangible assets are

valued at $470,000 for the year ending 2008?
A. Well, the book value of the intangible assets is 470,000.
Q. All right, sir.
A. That's that book value.
Q. And, again, if we look at the entry for -- for intangible assets on Page 43 of 84, again, it shows license agreements, trademarks, and patents, does it not, sir?
A. Yes.
Q. Okay.
A. That's the detail about the book value.
Q. Now, you were here when Mr. Sheehan testified that there were, I think he said, over a hundred different patents for retractable syringe products.
Do you remember that testimony?
A. I only recall -- I recall generally that he said there were a number of patents out there with retractable space.
Q. Whatever the number is that the jury remembers, there are a number of others out there; no doubt about it?
A. That's my understanding.
Q. You haven't studied these other patents, have you?

A. No, I haven't.
Q. You haven't gone and looked at what the licensing -- whether people have paid-up licenses or running royalty licenses for these other patents, have you, sir? I mean, for these other -- yeah, patents. I'm sorry.
A. Well, no, that's not quite true.
Q. Have you studied whether BD can manufacture a retractable device using any of these other patents?
A. Well, I don't know -- I don't know how to answer that question.
Q. You don't know how BD manufactures retractable devices, do you?
A. No. I generally have an understanding of how -- I haven't been in BD's plants.
Q. Right.
A. I don't how BD makes them. I just know how RTI makes them, and I assume it's more or less a similar process.
Q. You don't know whether BD could go to one of these other patent holders and take a license from them to manufacture, do you?
A. I don't know if they wanted to or not. I know they have approached SMI, and they acquired Saf-T-Med's patents.

MR. DAWSON: Your Honor, can we approach just a second?

THE COURT: Yes.

(Bench conference.)

MR. DAWSON: I intend to go through some other courts that have excluded his testimony, and it's not part of any motion in limine or anything, but I just wanted to approach the Court and make sure that it's okay before I proceed.

MR. BOWLES: Well, I would say it's irrelevant. My understanding is those kinds of things --

THE COURT: Well, I mean, are they published opinions?

MR. DAWSON: They are.

THE COURT: If they're published opinions, I have allowed cross-examination in that area before.

MR. BOWLES: All right, sir. Then I will just make my objection.

THE COURT: Very well.

(Bench conference concluded.)

Q. (By Mr. Dawson) Mr. Bratic, at least two other courts have found your testimony on damages to be unreliable; isn't that true, sir?

A. That's my general understanding. Yes, that's my recollection.

Q. And in the case of Monolithic Power Systems versus O2 Micro, you testified in that case, did you not, sir?

A. No, I didn't testify in the case. I gave a deposition, but there was no trial. The case settled.

Q. You gave testimony in your deposition, did you not?

A. Yes, I did.

Q. And one of the things that you said in that case is you opined that there will be a reasonable royalty of $149 million.

Do you remember that?

A. I don't remember the specific number.

Q. Even though in that case, the accused products, the sales, were only $77 million.

Do you remember your royalty was higher than the amount of the accused sales?

A. Oh, that's correct.

Q. Okay. And the court in that case found that your testimony was unreliable and inadmissible, did it not?

A. That's my general recollection. They excluded my report.

Q. All right, sir. And you remember a case involving Fluorine On Call, Limited versus Fluorogas, Limited; do you remember that case?
A. Yes. That was about ten years ago, as I recall.
Q. And in that case, the Fifth Circuit Court of Appeals, the appellate court, found that your damage model was a speculative lost-profit analysis that fails to show any evidence of the fundamental aspect of its own damage theory.
Did the court not hold that, sir?
A. That's my general recollection.
Q. All right, sir. And in a case called AlphaMed Pharmaceuticals versus Arriva Pharmaceuticals, the court excluded your testimony, did it not?
A. That's not true at all. I testified in that trial in Miami, Florida. I testified not just at trial, but I testified after trial in the punitive phase of the case.
Q. Don't you remember the court concluded that you improperly adopted the substance of an analysis and the court granted a new trial on the basis of your improper adoption?
A. That's not my recollection of what happened.
Q. All right.

MR. DAWSON: Let me approach the witness.

Q. (By Mr. Dawson) See where the court wrote: Despite the court rulings, it is apparent that Bratic improperly adopted the substance of Napper's analysis of a reasonable business plan to estimate AlphaMed's lost profits from sales of prescription.

Did I read that correctly?

A. Oh, you did.

Q. All right, sir. Mr. Bratic, you are billing at roughly 600 an hour for your work in this case?

A. My firm is charging that; that's correct.

Q. And how much has your firm charged RTI for your work in this case?

A. My recollection is about $300,000 or $350,000.

Q. Don't you remember at your deposition you testified it was in excess of 500,000?

A. That, I don't recall.

Q. Okay. Let me show you.

A. If that's what I said, then that's what I said.

Q. Do you want to look at your deposition testimony?

A. No.

Q. All right.

A. Whatever I said.

Q. You said in your deposition, which was in July of this year, that it was in excess of $500,000.
A. Whatever I said in my deposition is the number that I'll go with.
Q. And that was as of July. You've done work since then, correct?
A. Preparing for trial.
Q. So can we assume it's, what, 6 or $700,000 by now?
A. Well, I've been here a whole week, and I prepared the week I came up. So I probably have spent another 20 or $30,000.
Q. Okay. So in excess of 500, maybe in excess of 600?
A. Probably in the area of 5 to 600,000.
Q. Okay. That's all I have. Thank you, sir.
THE COURT: Redirect?
MR. BOWLES: Briefly.
MR. DAWSON: I've made a mess. I will get the rest of it later.

REDIRECT EXAMINATION

BY MR. BOWLES:
Q. Mr. Bratic, just a couple of questions.
A. Sure.
Q. How many times do you think your opinion has

been accepted by a court and jury?
A. Oh, 3 or 400 times in the course of my career.
Q. When were you retained by RTI in this case; do you recall?
A. I believe it would have been in the fall of 19 -- 2007 maybe.
Q. After you were retained by RTI, did you receive a call from BD's counsel?
A. I received a call and an e-mail from the Wilmer Hale Law Firm in this case.
Q. And what did -- tell us what they asked you.
A. Well, they said --
MR. DAWSON: Objection, Your Honor. Calls for hearsay.
THE COURT: Mr. Bowles?
MR. BOWLES: Your Honor, I think he's opened the door. We ought to be able to get into it.
THE COURT: Approach the bench.
(Bench conference.)
MR. BOWLES: He's attacked his credibility. BD's lawyers tried to hire him.
MR. DAWSON: We might have tried to hire him for any number of reasons, but the fact is that --
THE COURT: Well, for this case?
MR. BOWLES: For this case.

MR. DAWSON: I assume it's true. I don't know, but --

MR. BOWLES: I've got the e-mail.

THE COURT: I'm going to allow it.

MR. DAWSON: It's still hearsay.

THE COURT: I'm going to allow it. Gentlemen, one thing --

MR. BOWLES: Yes, sir.

THE COURT: -- I'm going to bring up with this witness outside the presence of the jury.

MR. BOWLES: Yes, sir.

THE COURT: He told my court reporter before he started his testimony that he intentionally slows down and, I think, fumbles, speed up the opposing counsel's side.

Now that disturbs me greatly, and I will be happy to let her be put on the stand, but I just wanted to --

MR. BOWLES: That's very disturbing.

THE COURT: I don't know the appropriate grounds for examination or not. But I just wanted to notify opposing counsel that that was his tactic, and I will be happy outside the presence of the jury to let her be called as a witness and let her --

MR. DAWSON: Let me ask you this: If I

wanted to examine him on that --

THE COURT: I don't know. I'd have to give a little thought, but let me assure you this is something I take very seriously.

MR. BOWLES: I understand that.

THE COURT: And maybe I'm misstating somewhat what was said.

MR. DAWSON: I don't want to put the court reporter in the box.

THE COURT: I don't either.

MR. DAWSON: But by the same token, if he said it.

MR. BOWLES: We will get back to him.

THE COURT: On the other hand, I'm not going to allow such conduct in my court.

MR. BOWLES: I understand.

THE COURT: If that's what was said. So I'm going to let him -- since you questioned his credibility, but I just want to give everyone notice of that, and I'm going to tell -- this witness is not going to be excused. We're going to have some more.

MR. BOWLES: All right. Thank you, Your Honor.

(Bench conference concluded.)

Q. (By Mr. Bowles) All right. Mr. Bratic, were

you contacted by the BD lawyers?
A. Yes, I was.
Q. For what purpose?
A. To hire me as the expert for Becton Dickinson.
Q. In what case?
A. In this very case, RTI versus Becton Dickinson.
Q. Now, let me ask you this: In regard to valuing intangible assets --
A. Yes.
Q. -- for the amount of money -- and I don't have the document.
Do you recall the document?
A. Yes.
Q. The 10-K?
A. Sure.
Q. You mentioned the term book value.
A. Yes.
Q. Is there an accounting requirement to carry intangible assets as a certain value?
A. Sure. And what was reflected on the 10-Ks for Retractable Technologies was the cost that they spent with -- to file their patents, patent applications. It's money they spent on their lawyers to get the patent applications filed and then the money they had to pay

the United States Patent & Trademark Office, the maintenance fees they have to pay on their patents. That's why the numbers are so low, because that just reflects the out-of-pocket costs to get the patents. It doesn't reflect the value of the patents, because that you wouldn't put on the balance sheet, because that's inappropriate under generally accepting accounting principles.

MR. BOWLES: Your Honor, we have no further questions.

THE COURT: Additional cross?

MR. DAWSON: May we have a moment to confer with Mr. Beck?

(Pause in the proceedings.)

MR. DAWSON: Nothing further, Your Honor.

THE COURT: Very well.

Mr. Potts, would you take the jury out, please. We have a matter that's going to take a little time.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Mr. Dawson, Mr. Bowles, I want to see you in chambers.

COURT SECURITY OFFICER: All rise.

(Pause in proceedings.)

THE COURT: Please be seated.

Mr. Dawson, I understand you want to take up something.

MR. DAWSON: I do, Your Honor. I believe at the conclusion of Mr. Bratic's redirect, he made a statement to the effect his testimony has been accepted by hundreds of judges and juries. I think it's inaccurate with respect to judges.

Obviously, the judge doesn't make determinations on the credibility of the witnesses. That's an issue for the jury. We would ask the Court to instruct the jury that judges don't make that determination.

THE COURT: Well, it appears if it's a bench trial or -- you know, I don't think we'll go there, Mr. Dawson.

MR. DAWSON: Okay.

THE COURT: I will -- you know I told them in my normal instructions on expert testimony they can totally disregard it, if they feel it appropriate.

MR. DAWSON: Thank you, Your Honor.

THE COURT: But remain in the courtroom.

THE WITNESS: Yes, Your Honor. Remain here or --

THE COURT: Or in the courthouse. We have other matters to take up at the end of the day.

THE WITNESS: Okay. Thank you.

THE COURT: You may step down.

Bring the jury back in.

(Jury in.)

THE COURT: Please be seated.

Apologize for the delay. But we will try to move forward now.

Call your next witness.

MR. BOWLES: Your Honor, we call Mr. William Kozy.

(Witness sworn.)

WILLIAM KOZY, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. BOWLES:

Q. Good afternoon.

A. Good afternoon.

Q. We've met before, haven't we?

A. Yes, sir, we have.

Q. You're Mr. William Kozy, are you not?

A. Yes, sir.

Q. And you are an Executive Vice President of Becton Dickinson and Company, aren't you?

A. Yes, sir.

Q. And your address is One Becton Drive, Franklin Lakes, New Jersey; is that correct?
A. Yes, sir.
Q. And I think you told me that you have worked for BD for 34 years; is that right?
A. Thirty-five years now, sir.
Q. Congratulations.
A. Thank you.
Q. Mr. Kozy, my research shows that BD was formed as a company in 1897.
Is that your understanding?
A. Yes, sir, that is correct.
Q. And it was formed in New York City, actually on Vesey Street in New York City; is that correct?
A. Well, it's an interesting background. Maxwell Becton and Fairleigh Dickinson actually met in Texarkana in a train station, and they did return to the East Coast and started a company.
Q. And they started the company in New York City; isn't that right?
A. That is correct.
Q. In fact, as I understand it, their paths crossed in a railroad station restaurant in Texarkana, Texas, when Becton -- Mr. Becton noticed the sun shining in Mr. Dickinson's eyes.

Does that sound familiar?
A. I don't know that I can attest to that, sir, but it's a good story.
Q. All right. He pulled down the shade and a grateful Dickinson invited him to breakfast?
A. You're ahead of me, sir.
Q. All right. I'm reading from a book called The History of Becton Dickinson.
Have you ever read this?
A. Yes, sir. I just don't recall.
Q. Okay. Now, has Becton Dickinson ever had a headquarters in Texarkana, Texas?
A. No, sir.
Q. Has it ever had an office in Texarkana, Texas?
A. No, sir.
MR. BOWLES: Braden, let's go to Exhibit 118. It will come up on the --
Q. (By Mr. Bowles) There should be a book, Mr. Kozy, a notebook -- that's your deposition. Hopefully, we won't go to that.
Do you see that notebook?
A. Yes, sir.
Q. Do you see Exhibit 118?
A. I do.
Q. Okay. This is a -- let me give you a second.

Do you have it in front of you?
A. Yes, I do.
Q. And it's also on the screen, too. It's on your desk.
This is an e-mail from Jana Machan to you dated November 17th, 1998. Do you see that?
A. Yes, sir, I do.
Q. You and I talked about this e-mail, I think, in your deposition.
Do you recognize it?
A. Yes, sir, I do.
Q. All right. In it she says: Bill, as you requested, here is a quick update on Premiere/Saf-T-Med as per the outcome of the Monday morning -- I'm sorry -- the Monday meeting.
Melanie, Jon, and I presented to Premiere on Monday for approximately -- or approx -- one hour, briefing them on safety environment, BD positions, and BD hypo safety product development.
There were few questions on product development, although I believe the needle-based standardization angle was new and interesting to them. But we were, underlined, asked specifically if we were looking at retractables currently. We gave the, yes, we're still exploring that, and we're always open to

good, new products, stock answer.

Today, Steve, Jon, and I met to discuss upcoming Premiere meeting on November 23rd, which will also be attended by Saf-T-Med. It's confirmed that Jim Erbs knows we're coming, a concern you had. Jon Bell, Kevin Seifert, and Steve Gundersen will attend. We are keeping our numbers down so as not to appear overly -- overly interested or alarmed.

Do you see what I just read?

A. Yes, sir, I do.

Q. And that's stated November 17th, 1998, isn't it?

A. Yes, sir.

Q. All right. Now, this was shown to the jury this morning. I wanted to make sure that the jury knew who Premiere was and is.

Premiere is a group purchasing organization, isn't it?

A. Yes, sir.

Q. And it represents over 2200 hospitals, doesn't it?

A. I do not know the answer to that, sir.

Q. All right. I just was looking at its website yesterday.

Would you disagree with the fact that Premiere

represents over 2200 hospitals?
A. I wouldn't have information, sir, to agree or disagree.
Q. All right. Fair enough.
Would you agree with me that Premiere is an important customer of BD?
A. Today, 1998, sir? Can you clarify for me?
Q. Sure. In 1998.
A. Yes, sir.
MR. BOWLES: Braden, let's go to Exhibit 119.
Q. (By Mr. Bowles) Now, Mr. Kozy, do you have Exhibit 119 in front of you?
A. Yes, sir.
Q. That appears to be an internal document at Becton Dickinson.
Do you see that?
A. Yes, sir.
Q. Would you agree with me it's internal to Becton Dickinson?
A. Yes, I do.
Q. And it's dated January 12th, 1999. It's a memorandum to Executive Committee. And then it lists a number of people, and I'm not going to go through all those.

But Mr. Castellini was -- in January of 1999, was President -- or Chairman and Chief Executive Officer of Becton Dickinson; is that right?
A. Yes, sir.
Q. All right. And just looking at the rest of those names, do those -- do you recall that they were on the Executive Committee of BD in 1999?
A. Yes, sir.
Q. All right. Then if you look at the next page --
MR. BOWLES: Braden, if we go to the next page; that's Page No. 432.
Q. (By Mr. Bowles) There is at the top, authorization of agreements with Saf-T-Med, Inc.
Do you see that?
A. I do. Yes, sir.
Q. And this is a corporate authorization, isn't it, sir?
A. Appears to be, yes, sir.
Q. It says: Whereas representatives of Becton Dickinson and Company have been negotiating to, one, acquire the worldwide patents and patent applications, patents, of Saf-T-Med, Inc., a Delaware corporation, related to a retracting needle syringe, the product; two, to have Saf-T-Med, Inc., do further development of

the product; and, three, to acquire certain assets related to the use, development, and manufacture of the product.

Do you see that?

A. Yes, sir, I do.

Q. Have you ever seen this document before?

A. No, sir, I haven't.

Q. All right. Turn to Page 434.

MR. BOWLES: Which, Braden, would be, I think, two pages later.

Now, Braden, if you can, go to the top. Next paragraph, please.

There you go. Just that top paragraph. That's hard to read. This is the best copy we've got.

Q. (By Mr. Bowles) Authorization is requested -- and this is for the jury, this is -- says to be CB-6 Summary.

Do you see that at the top?

A. Yes, sir.

Q. And this is a document that's presented to the Board of Directors for -- to support the expenditure of funds at BD.

Is that a fair statement?

A. First to senior management and then to the Board, sir, yes.

Q. All right. And then you see some signatures in the bottom right-hand corner?
A. Yes, sir, I do.
Q. All right. And you recognize, for instance, Mr. Cohen's signature, don't you?
A. Yes, sir, I see it.
Q. All right. Top paragraph, it says: Authorization is requested to acquire specific assets of Saf-T-Med, Inc., primarily patents and other intellectual property related to retractable hypodermic syringe technology and for development work related to the require -- required technology.
Boy, this is hard to read.
The amount being requested is $17 million, approximately 15 million for assets and 1 million for contract development work. Saf-T-Med is a small company formed in 1992 that has three employees focused on the development of innovative products for the medical industry.
Do you see that?
A. Yes, sir, I do.
Q. Do you have any reason to doubt the statements contained in that paragraph?
A. No, sir, I do not.
Q. Third -- if you'll go down to the third

paragraph, first sentence.

The CB-6 Summary says: Currently, BD has 72 percent of the approximately -- approximate 1.2 billion hypodermic devices used for skin injection.

Approximately 92 of these injections are administered using conventional devices, and 8 percent are administered using devices with advanced safety features.

Do you see that?

A. Yes, sir, I do.

Q. Do you agree with that, sir?

A. Sir, I'm sorry. This has been a long time ago. I can't confirm that, but I agree.

Q. Is it accurate what is stated?

A. To the best of my knowledge, it is accurate.

Q. And, of course, this goes to the Board of Directors, so whoever prepared it would certainly want it to be accurate, correct?

A. Yes, sir.

Q. Then let's go to the last paragraph.

The return on this investment is generated -- are we there?

The return on this investment is generated primarily from the financial benefits of keeping this technology out of the hands of competitors as well as competitive benefits that it would bring to BD's existing hypodermic product offering.

Do you see that, sir?

A. Yes, sir.

Q. And, again, this document was presented to the BD Board of Directors; is that correct?

A. Yes, sir.

Q. Let's go to -- and just so the record is clear, this document is dated up in the top right-hand corner, December 21st, 1999. I know that's hard to read, but it's at the very top right-hand corner.

Just for the jury -- I'm sorry -- 1998. December 21st, 1998.

A. Yes, sir, I agree.

Q. And did you understand that the purchase of Saf-T-Med was completed in June of 1999?

A. I know it was sometime during the course of the summer, and I would think June is -- is correct.

Q. Now, if you would, let's go to 159 in your book.

MR. BOWLES: Braden, 159.

A. Did you say 1-5-9 sir?

Q. (By Mr. Bowles) Yes, sir.

A. Yes.

Q. This is the CB-2.

Now, based upon the document we just saw, BD purchased Saf-T-Med for $17 million, right?

A. Yes, sir.

Q. Then less than a year later, the document numbered 159, capital appropriation request, was submitted to the Board of Directors, right?

A. Yes, sir.

Q. And, in fact, you signed this document, didn't you?

A. Yes, sir.

Q. In the first paragraph, the statement is made: This spring-based safety syringe technology presents a unique opportunity for BD to aggressively redefine the basis of competition and revitalize the profitability of a significant segment of the U.S. hypodermic market. Spring-based technology delivers the best clinical features and can command the highest market premium both in price and margins. This technology will capture 45 percent of the safety injection market by -- is that fiscal year 2005?

A. It's tough to read. I think so.

Q. All right. Which equates to over 15 percent of the entire hypodermic market. Without BD entering the spring-based segment, a competitor launching a next-generation spring-based product will convert a sizeable -- a sizeable portion of the safety injection opportunity and erode BD's base market share position.

Do you see that?

A. Yes, I see that.

Q. And you signed this document after you had read it, correct?

A. That is correct.

Q. And based upon this document, the Board of Directors of BD authorized a further expenditure of $66.4 million; isn't that correct?

A. Yes. That was based on other management presentations as well.

Q. And the Integra product -- I'm sorry -- the Saf-T-Med product, as redesigned by BD -- the Saf-T-Med product as redesigned by BD became the Integra product, right?

A. Is that on the document here, sir?

Q. No, sir.

A. Oh.

Q. I'm just asking you that question.

A. Could you clarify? I'm sorry.

Q. The Saf-T-Med product, as redesigned by BD, became the Integra, right?

A. Yes, sir, with manufacturing modifications BD made.

MR. BOWLES: Your Honor, we're about to get into briefly, not long, just a couple of documents into an area that you may need --

THE COURT: Subject to the protective order or not subject to it should step out --

MR. BOWLES: Yes, sir.

THE COURT: -- yet one more time. I apologize. It's going to be necessary for those not subject to the protective order to step out.

(Courtroom cleared.)

(REPORTER'S NOTE: The testimony is filed under seal. Sealed Section 1.)

EXAMINATION

BY MR. BECK:

Q. Mr. Kozy, you have already been introduced to the jury. They know who you are and who you worked for and how long you worked there. And they know where -- essentially, what your position is.

I want to talk to you a little bit about your background so the jury can get a better sense of who you are and what you are. And then I want to talk to you about some of these documents. And then I want you to explain to the jury the kind of historical context and development of the various safety products they've heard talked about the last three days, okay?

MR. BOWLES: Excuse me, Mr. Beck. I think we can bring in everybody.
MR. BECK: Oh, yes, absolutely. Yes.
THE COURT: Yes. If someone would invite everyone to come back in the courtroom.
(Courtroom opened.)
MR. BECK: May I proceed, Judge?
THE COURT: Yes.
Q. (By Mr. Beck) Mr. Kozy, tell the jury where you grew up.
A. Yes, sir. I grew up in northeastern Ohio.
Q. And what part of northeastern Ohio did you grow up in?
A. A small town called Westfield Center, Ohio.
Q. And is that as big as Marshall here or smaller?
A. Sir, it's about 500 people.
Q. And when you grew up there, I take it that you lived with your mom and dad.
A. Yes, sir, I did.
Q. Tell the jury what your mom and dad do.
A. They were both schoolteachers.
Q. What kind of teachers? Let's start first with your mother.
A. Sure. My mother taught second grade.

Q. And what about your dad? What did he teach?
A. My father taught at the high school. He taught vocational education, helping people find jobs who chose not to go to college.
Q. Now, growing up in that -- by the way, did you have any brothers or sisters?
A. I have one brother.
Q. And where does he happen to live now?
A. He now lives in Austin, Texas.
Q. And who does he work for?
A. He works there for the State of Texas.
Q. All right. Now, when you grew up in your household with your brother and your mom and dad, did you eventually make a decision that you wanted to go on to college?
A. Yes, sir, I did.
Q. And where did you go to college?
A. I went to a school called Kenyon College in Gambier, Ohio.
Q. And how big a school is Kenyon College?
A. Kenyon College is 1200 people.
Q. All right. And did you eventually graduate from Kenyon College?
A. I made it, sir, yes.
Q. And what kind of a degree did you get in

Kenyon College and when?
A. I have a Bachelor of Arts in English, and I graduated in 1974.
Q. And eventually, you got married?
A. Yes, sir, I did.
Q. And when did you get married?
A. 1976.
Q. And how long have you been married?
A. Long time, sir.
Q. Well, you better have the exact time period. How much time are we talking about?
A. It is 33 years.
Q. All right. Tell the jury how you and your wife met.
A. My father fixed me up on a blind date.
Q. That may be the most unusual way to meet a wife I've ever heard, but I want to ask you this: Have you been married since 1976 to the same woman?
A. Yes, sir, I have.
Q. Children?
A. I have three.
Q. Now, I take it they're grown, out of the house; is that correct?
A. Thank goodness, and all working right now.
Q. All right. Now, did you, at some point, want

to try to acquire even more education?

A. Yes, sir, I did.

Q. And tell the jury what that was and what happened.

A. I was accepted into graduate school at Indiana University for the fall of 1974. I was going to pursue a graduate degree in English and with a coaching assistantship at Indiana University under Bobby Knight, who was an Ohio native. Went out to school.

My younger brother was just starting to school, so he went through that stage where, wait a second, we're going to have to just hold off on this right now, in terms of the family.

So I decided I would not go to grad school at that point. My brother was just starting his undergraduate. I am older. So I decided that I would just go back to work for a while.

Q. All right. Now, there was a question asked you on direct about whether Becton Dickinson has any headquarters in Texas, and you answered that they do not.

Do y'all have any office at all in Texas?

A. Yes, we do.

Q. And where is that located? And just tell the jury how big it is.

A. Yeah. We have a corporate sales office in Coppell, which is right outside of Dallas. We have six people that work in there, and they support about 20, 21 sales reps for the company that also work across the State of Texas.

Q. All right. And can you give the ladies and gentlemen of the jury some idea of the hospitals in Texas where your safety syringe products are sold.

A. Well, as we drove in here the other day -- I guess it was last Friday -- I had to drive right past the hospital, so I do get pretty curious. I've been doing this for a long time.

So I know that Good Shepherd Hospital, Marshall, Texas, uses our safety products.

Then, of course, the sales rep proceeded to tell me about the hospital in Texarkana. I think it's St. Michael's that also uses our products.

And then we've been fortunate in some of the bigger hospitals of the state Presbyterian Memorial, Hermann, Baylor, just to name a few --

Q. M.D. Anderson?

A. -- all use our safety products. M.D. Anderson also using our products.

Q. All right. Now, just so the jury can get a sense of the market we're talking about, what percentage of syringes are actually used in hospitals?

A. At the present time, I think about 60 to 65 percent of all the syringes used are used in acute care or a hospital environment.

Q. All right. And where are the other percentages given?

A. They're used in alternate sites, the doctor's office, the nursing homes, the surgery centers, all those other places where healthcare is also being provided.

Q. And there's been some talk about shots. When people get shots, what percentage of those are in hospitals and outside of hospitals?

A. Well, it's -- it's -- it's a little confusing, because when you're in a hospital, remember that most people that are hospitalized have got an IV catheter.

If you've gone in -- if you've had anybody in your family admitted to the hospital, pretty much the first thing they do is give you an IV catheter, so a lot of your medication is going to come through that IV catheter.

So in the hospital, it's a smaller percent of your medication that's delivered, you know, via a syringe and needle, and actually, about 60 percent of all the syringes used in a hospital are used without a needle, because they use the syringe just to access the IV and other related, you know, applications, including the syringe pump or various other things that are going on in the hospital.

Q. So does that mean, in a hospital, for example, you can actually get the benefit of a shot without actually feeling the needle at all?

A. It's because that IV catheter is in, and that's why the physician or the nurse will give you that IV catheter so that every time you need another dose of medicine, you don't have to have an injection. Most people, obviously, are uncomfortable with an injection.

Q. All right. Let's turn now to Becton Dickinson. We know that the company started in 1897 in Texarkana. And what I want you to tell the jury, what does Becton Dickinson do? What is its business? What is it about? Tell the jury, please.

A. BD is in the global healthcare and medical technology business. It has three important pieces of it. It's got a medical business, and they make syringes and needles and IV catheters and basic medical devices like that.

They're also into the diagnostics business. They make blood collection products. If you've ever had your blood drawn, there's a good chance that that could have been one of our products.

And then there's a third large piece of the company that's called Biosciences, and they make very specialized cellular analysis equipment for helping people with cancer diagnosis and also with HIV and any type of a disease where your immune system is not working right.

Those are the three largest pieces of the company.

Q. Okay. Now, how is Becton Dickinson organized? Just very briefly, tell the company -- tell the jury how the company is organized.

A. We're actually organized across those three dimensions that I just described.

So if you were looking at one of those classic organization charts, you would find the company's senior leadership team with the CEO, and then you would have to find a responsible leader for BD Medical, for BD Diagnostics, for BD Biosciences.

And then you would find the other people that also have to support that. They do finance; they do manufacturing; they do supply chain; computers, things like that.

Q. All right. These three segments, medical, diagnostics, and bioscience, which one of those segments have you worked in?

A. Sir, I have worked and been a leader in all three of those segments.

Q. All right. Since 2002, which one have you worked in?

A. Since 2002, sir, I've worked in all three segments.

Q. Okay. What was your first position when you joined the company 36 years ago?

A. I was hired as the sales representative in Cleveland, Ohio. It was close to home.

Q. And then for how long did you work in that particular area?

A. I worked in Cleveland for two years. I was transferred to another sales position in Detroit, Michigan.

Q. All right. And how big was your territory that you were working on?

A. I just had the -- I had responsibility for selling the laboratory products or the diagnostic products I described just for the State of Michigan and northwestern Ohio at that point in time.

Q. And were you eventually promoted to regional sales manager?

A. I was promoted to regional sales manager in

1980.

Q. Now, what positions have you held in what you've described as the blood collection segment of the company?

A. Well, I kind of grew up, as I described, in that blood collection business, so my first regional sales manager position was for the blood collection business.

And I continued in that business from 1980 through a series of roles until 1983. I moved back to the east coast. I was asked to take a new assignment back in New Jersey, and I moved from Michigan to New Jersey.

Q. Did you eventually become president of the blood collection segment of the company?

A. Yes, sir. In 1988, I got the opportunity to take that leadership job.

Q. And how long did you hold that position?

A. I held that position for eight years.

Q. Now, what are blood collection products?

A. A lot of people call them evacuated tubes or Vacutainer tubes, but if you've ever had to have a blood test, what they will do is take a blood collection needle, and they'll always try and access your arm, the veins in your arm, and they'll place that needle.

And then they'll use plastic or sometimes glass evacuated tubes, and they draw the blood from your arm. And that's what goes to the laboratory and allows them to do a broad range of chemistry and hematology tests to determine potentially what may be causing your discomfort or illness.

Q. And what about the BD Medical segment. Tell us what positions you've held in the BD Medical segment and when.

A. I moved to the worldwide president of injection systems, which was a sizeable portion of the medical business, in 1996, and I was in that role from 1996 through the year 1998, through October of '98.

Q. Did you eventually become president of that particular segment?

A. I had moved over there as the president of the division.

Q. All right. Now, I want to ask you whether or not you have had any role in the development of what the jury has heard referred to as the Integra during the time in BD Medical.

A. Yes, sir, I did.

Q. And tell the jury generally what your involvement has been in the development of BD Integra.

A. As I've mentioned, I had moved to that part of the company in October of 1996, and by early '97, as the market was continuing to evolve on safety, I was working with the R&D organization, as well as the business development organization to identify a retractable product that the company would market.

Q. And are you currently the head of BD's medical business?

A. I'm back to where I was working before. So I returned there in January of' 09. I was asked to go back and take responsibility again.

Q. There is a group within Becton Dickinson referred to as the office of the CEO, is there not?

A. Yes, sir.

Q. And tell the jury generally what that is, the office of the CEO.

A. Those are 11 senior managers of the company who work directly with the CEO of the company in managing and directing the company for improved performance and growth, and of course, meeting the expectations of the shareholders and the customers.

Q. And are you part of that group?

A. Yes, sir, I am.

Q. Now, I want to go back to your involvement in the Integra. Tell the jury whether or not you were involved in the decision to go forward with the development of the Integra.

A. Sure. I was -- I was involved and particularly in that period of 1997 and particularly early 1998 when the company was pursuing a retractable platform so that they could add that to the existing hypodermic product line that we had, the safety product line.

We had, as you've already seen, many of the products. I won't highlight those again. But we were looking to add a retractable product line to that array of safety products that we had.

Q. All right. Now, you used the term platform, and I want to make sure we're all together. What do you mean by platform?

A. Well, we had a series of safety products, and we had recognized that customers all had different types of preferences, so we called that group of safety products the safety platform.

And so there were various types of technologies and products that were offered of various types to try and meet the needs of various types of nurses, physicians, anyone working in healthcare doing injections.

Q. All right.

MR. BECK: If we could put up B040,

please.

Q. (By Mr. Beck) I mentioned earlier that I'd like you to be able to kind of put in historical context the various generations of safety products.

And did you assist in the preparation of this timeline, so the jury can get a better handle on Becton Dickinson's products and when they came on the market?

A. Did I assist in the preparation --

Q. Yes.

A. -- of this slide?

Q. With providing information, so that we could --

A. Yes, sir, I did.

Q. All right. Now, I want to -- the jury has heard some references about the Safety-Lok syringe. Is that basically a first generation type safety syringe?

A. Well, sure. You can see it was launched in 1988, and it was the first safety product launched in the United States designed to eliminate the risk of needlesticks.

Q. All right. And then sometime later in October of 1992, another safety product was the Safety-Lok blood collection device; is that correct?

A. Yes, sir, that's correct.

Q. And generally, what was that?

A. Of the various products being used with patients, a wing set is a small almost IV catheter-like product that has a couple of wings around the needle. You may have seen one.

But those were also known to be relatively of high risk, because the products that go into a patient's vein, of course, have even more exposure to the blood. And so a wing set -- an IV catheter is another example -- were some of the first products that the company wanted to offer safety products in, and that was the first safety product for blood collection.

Q. Okay. And then we get to June of 1996, and we have the SafetyGlide needle. Tell the jury what that is, please.

A. That was BD's next generation detachable hypodermic syringe needle with a hinged technology. It was a new technology beyond the Safety-Lok that offered an improved and easier technique for the nurse or physician to use.

Q. All right. Now, as time moves on, '88, '92, '96, what is happening here in the safety market, Mr. Kozy?

A. Well, there's kind of a couple of different periods here. It's almost as the timeline depicts. From 1988 to about 1995, you were seeing a much greater recognition of the risk of blood-borne pathogens. As you heard the other day in some of the other testimony, '91 was an important date, because the government started, for the very first time, to get engaged on the topic.

So from '88 to '95, you were starting to see newer, first generation technologies being brought for the first time to hospitals and alternate sites to try and help them with this risk of needlestick safety.

Q. All right. And to be blunt about it, the more safety products that are sold, does that benefit Becton Dickinson?

A. That benefited Becton Dickinson and the hospital industry.

Q. Okay. Now, I want to ask you, with respect to the context here, the jury has seen some deposition clips or snippets from several Becton Dickinson people, and you were in the courtroom, and you saw that, did you not?

A. Yes, sir, I did.

Q. And you saw that there were documents put up, I believe, from '96, '97, '98, and '99, correct?

A. Yes, sir.

Q. Now, to put those into context, when was it that Saf-T-Med was acquired by Becton Dickinson?

A. We just reviewed that document. It was sometime in the early summer of 1999.

Q. So we would put that somewhere -- somewhere in here (indicating); would that be a fair statement?

A. That would be correct, sir.

Q. Okay. Were you involved in the decision to acquire Saf-T-Med?

A. I was involved indirectly. The company and the product were referred to me. There was a retired Becton Dickinson employee who was serving as an advisor to the Saf-T-Med Company, and he had called me in the early fall of 1998 and indicated that he had seen a new product and a new technology and that he felt that BD should take a look at it, and he wanted it to be brought in.

Q. And what was that product?

A. That was the Saf-T-Med product.

Q. Okay. And we're going to get to this in just a minute.

The appropriation for $66 million that you saw, you signed on that, did you not?

A. Yes, sir, I did.

Q. And I take it that you were in favor of the acquisition of Saf-T-Med; fair statement?

A. Yes, sir, I was.

Q. Okay. Now, why would Becton Dickinson be interested in acquiring a company like Saf-T-Med after the information that you just told the jury about was called to BD's attention? Why were you interested in doing that?

A. The company, in about the period of 1995, had set a series of product expectations or criteria of what they felt was going to be required for a retractable product to be successful in the marketplace.

These have been defined by both the marketing and the engineering group, and they collaboratively said, we're going to need this list of things for a retractable product to be successful.

Q. Okay.

MR. BECK: And let's put up on the screen Exhibit -- Plaintiff's Exhibit 55. Can you put that up on the screen, please?

Q. (By Mr. Beck) You've seen this document before, have you not?

A. It's pretty hard to see. This is the rethink retractable document?

Q. Yes, sir.

A. Yes, sir. I see it.

Q. And I'm going to try to reference a couple of things in here. This has been referenced several times by RTI and its witnesses, and in particular, so that the jury can focus in on this, they have really emphasized a letter in here from a Dr. Richard Griffith. You know Dr. Richard Griffith. You know who he is.

A. Yes, sir, I do.

Q. All right.

MR. BECK: Let's bring that up. I think it's the Bates No. 563, and I particularly want to zero in on the sentence that the Becton Dickinson witnesses have talked about. It's the one that says: Becton Dickinson engineers worked very hard.

Q. (By Mr. Beck) You see that, sir?

A. Yes, sir, I see it.

Q. Okay. First of all, I want the jury to know, what is meant here when it says: To perform the standards we feel meet our customers' legitimate needs and expectations.

What does that mean within Becton Dickinson?

A. That's just Dr. Griffith's restatement of the standards and the criteria that I was just describing, that we had set a series of performance criteria that we felt we had to meet to have a successful product.

Q. All right. Now, so that the jury might know, this document that they keep talking about is within a manual, is it not?

A. This is a piece of a larger document.
Q. Okay.
A. It is one page of multiple pages.
Q. And tell the jury whether or not this document refers to automatic retractable syringes at all.
A. No, sir. As I was saying before, there were time windows of technology and evolution of the market. So this is still in the '95 timeframe. So this study was referring to products that, of course, we had seen in '93, '94, and '95.
And so the reference of this document is to those very early stage, first generation, primitive, manual retractable items, and those are very different products in the documents than what we're talking about here.
Q. All right. We're going to try to show the jury the prototypes, because I want you to explain here, how does a manual retractable syringe work? I'm not talking about automatic; I'm talking about manual. And we're back in '95. Tell the jury how that works.
A. Well, with apologies to all engineers -- I'm certainly not an engineer, but some of the first generation products were very different. If we can call up the picture, it would make it a little easier. But in some of these examples, the needle was attached

actually to the plunger, which we've talked a lot about this week with some of the designs. So you had to pull the plunger all the way back, completely out of the barrel, and that's what pulled the needle away from the patient.

So when I reference the term primitive or first generation products, this was just a very early stage invention, but it was called retractable, because it did retract from the patient. It was not the products that we've been talking about, though, this week.

Q. All right. We're going to put up on the screen these retractable syringes, the manual, and -- just so you can show the jury the actual pictures.

A. Well, these are the pictures behind the doctor's letter.

Q. Correct. And can you see on here -- what are we seeing here? For example, there's two hands.

Show the -- tell the jury what this is referencing.

A. Well, these are kind of the classic syringe preparations.

THE WITNESS: Could we continue through the document? Can we go to the next page?

Q. (By Mr. Beck) We'll see if we can get a better picture of this, but in the interest of time, let's move on while we're looking for that.

A. Okay.

Q. But is there a diagram in here that --

A. There is a diagram.

Q. -- that shows the manual nature of the manual retractable syringe in this --

A. There is a diagram. I'm just trying to distinguish between manual retractables and the automated technologies.

Q. All right. Now, the jury has heard how you've been involved with Becton Dickinson for 35 years. Why have you stayed there for 35 years?

A. Well, in a very -- obviously, a very small way. There's a lot of people that work there. I'm just one of them, okay?

But I've had a terrific opportunity to introduce new products that have significant impact on patients and healthcare. I've had a chance not only to do that in the United States, but I've had a chance to take those products around the world.

I was one of the first people from the company to introduce evacuated tubes to the government of Beijing in the mid-1990s.

I was one of the first people to take some of the safety products we've talked about this week to markets in western Europe, all U.S. made products being shipped around the world.

And so for me, in a small way, I enjoy healthcare. You can probably tell from my comments here. It's been a very unique opportunity for me. And of course, if you stay somewhere 35 years, I guess it goes without saying, you like the people you're working with.

Q. All right. Are you proud of the people and what they've accomplished?

A. No, sir. I'm very proud.

Q. Okay. Now, you talked to the jury about criteria that you-all are looking for. Let's just enumerate for the jury what that criteria is.

A. Well, there were multiple criteria, but there were three very critical always-discussed topics that we were trying to achieve in getting that -- what the term -- you saw on the documents this morning, it was called -- you saw it in the quotes -- strong retractable.

Strong retractable to us meant three things. Number one, the needle needed to be detachable. And the reason it needed to be detachable -- if you don't mind, I'll just circle back to my earlier comment -- 60 percent of the syringes that were being used in the hospital were being used without a needle.

So a number of physicians, nurses, and other people in our market research work had said, hey, wait a second. You don't understand my job. I can't be using just a syringe with an attached needle. I use it over half the time for other reasons.

So the detached needle was an important criteria for us. It had been all along.

The second thing for us was that it had to be simplified and easy to manufacture. Remember that healthcare, since the -- particularly since the early 1980s, has been under tremendous pressure to reduce its costs. And we have -- we have always continually over the years tried to make our products as affordable as we -- as we possibly could.

So this manufacturability, meaning can you make the parts in high volume? Can you make them reliably at high quality? Will they fit together at high speeds? Can you do that at low cost? Because the only way you can price your product at a lower price is to make sure that you've got a really low cost.

So those were right on the top of our list. And then the -- I also -- excuse me. There was a -- in addition to the focus on detachable needle and the

manufacturability piece, we had to make sure that we had a capability -- and I'm struggling with my words here.
Just give me a second on that one.
Q. Okay.
A. I want to get this -- make this clear. In addition to the -- to the simplicity of manufacturing and being able to get this needle off in a detachable way, we -- and I'm sorry. I'm drawing a blank. I'm having a senior moment here.
Q. Okay. All right. But the three criteria, you've referenced, correct?
A. No, sir. I've referenced two of them.
Q. Two of them.
A. And I have omitted one, and it's a senior moment.
Q. Okay. We'll come back to that.
Now, does Becton Dickinson do market research to try to find out what these healthcare workers, doctors and nurses, really want in your products?
A. Yes, sir. I think it was referenced this morning that we did extensive market research for a number of years, particularly in that period of 1995 to 2000, which was the second phase of the overall safety initiative.
Q. Okay. All right. Let me switch gears for

just a moment, and then we're going to come -- then we're going to come back to something. I'm just trying to see if this is the one that tells us whether or not this is the manual here.

A. Those are manuals, but it's not demonstrating how the product was made retractable.

MR. BECK: You can take that off.

Q. (By Mr. Beck) All right. Well, let's talk a little bit about where Becton Dickinson has been first over the years.

After the company was founded in 1897, do you remember what the first couple of products were?

A. There's two products that they talk about most frequently. The first was a glass syringe, and the second one was the original glass fever thermometer you use to take your temperature if you've got a little fever.

Q. And do you remember when those first came on the market approximately?

A. The -- yeah. The glass syringe was about 1898, and I think the fever thermometer was either real late '98 or early '99.

Q. Okay. And are syringes still made of glass even today?

A. Some syringes are made of glass. Most are made of plastic and, of course, are disposable. But large pharmaceutical companies still use glass syringes for specialized prefilled medications.

If I could give you an example, a significant number of the H1N1 vaccine this year is being delivered in a glass prefill.

Q. Okay. And when were the first disposable plastic syringes made available?

A. They were first released in 1961, I believe.

Q. And are they considered to be an advance over the glass?

A. They were considered to be an advance over the glass because of the single use and the disposability and the elimination of any risk of reusing any type of a glass syringe.

Remember, that up until then, glass syringes could be frequently reused, and many times were.

Q. All right. I told the ladies and gentlemen of the jury in opening statement about certain milestones in Becton Dickinson's history, and could you kind of tell the jury about what some of those milestones are?

A. Well, the company invented the first insulin syringe. And if you've ever had anybody in your family with diabetes, it's a very difficult disease. So we're proud of that first insulin syringe.

We provided all the syringes for the original polio vaccine campaign that was run by Dr. Jonas Salk.

In the late 1940s, we invented the evacuated tube, the blood collection products that we talked about a little earlier.

In the 1960s, as I just mentioned, we were the first to market with plastic, single, disposable syringes, and then that application, that concept of single use spread to many other medical device categories, like blood collection needles, like IV catheters, many other medical devices that are used now on a disposable basis and were used reusably prior to that.

Q. All right. How about in the '70s? Was there a fluorescence activated cell sorter?

A. Yeah. That's the BD Biosciences businesses, and that's the sophisticated cellular analysis. The company was the first to invent a capability, using very unique instrumentation and scientific reagents, to help people in the detection of cancer, particularly, the blood cancers, as well as then when the HIV epidemic came along about 10 years later, the identification and characterization of HIV for treatment.

And that -- those CD4 -- CD4 -- excuse me -- is a type of a cell. That's the cell they monitor if you have HIV to know if you're getting enough medication or the right medication or not and that CD4 monitoring instrument now is the standard here and in Africa, China, Brazil, and many places over the world where people really can't afford a lot of the AIDS medications.

Q. Are you personally particularly proud of the United Nations Children's Fund and BD's involvement in that?

A. Well, I'm personally proud, because I initiated that activity in 1996. Becton Dickinson partnered with the UNICEF fund. And I know that in the United States, we don't think much about the disease of tetanus, because it's pretty much been eliminated in the U.S., because the vaccine started here decades ago.

There's not a tetanus problem in the U.S. But, you know, hundreds and hundreds of thousands of mothers and children still die of tetanus around the world.

So in 1996, we created a program with UNICEF partnering with them to eliminate neonatal tetanus. We've been working on that now for 13 years. It is not yet eliminated. The prevalence rate has come down over 50 percent, though, since we started.

Q. All right. Now, what about bioterrorism? Has

Becton Dickinson been asked by the United States Department of Defense to assist with respect to the detection of bacterial terrorism, if you will, bioterrorism? Tell the jury about that.

A. We were engaged by the government a couple of years ago. We have -- in the diagnostics business, we've been in the microbiology business. And the microbiology business, that's the detection and identification of bacteria and things like that. And we have some very sophisticated, automated instrumentation capability. So we were engaged by the government a few years ago to collaborate with them on detection methodologies related to the possibility of biowarfare.

Q. All right. Now, I told the jury on -- in opening statement, that as things keep progressing from the next generation to the next generation, that we're either close to or already there where you can actually get the benefit of a vaccine without actually receiving a shot.

Now, I want you to tell the jury whether what I was explaining is right or not.

A. No. What I can do -- it was right. We have a new product that's out -- actually, it's been on the television several times in the last couple of weeks.

They're giving several of the children in the U.S. right now their H1N1 vaccine into their nose. There is no needle. And it's called Accuspray, and it's made by our pharmaceutical systems business.

And so you can imagine, this is pretty popular with the kids. It's the first vaccine they ever got, and they didn't have a needle. It's probably the only time we've ever gotten any applause when it comes to delivering medicine.

Q. Okay. Now, let's turn now to these safety syringes.

MR. BECK: And if we could put the timeline back up on the screen, please.

Q. (By Mr. Beck) All right. We talked briefly about the Safety-Lok, and to your knowledge, was that the first safety syringe on the market?

A. To the best of my knowledge.

Q. And that would be in 1988, correct?

A. Yes, sir.

Q. Now, has BD acquired over time licenses or technology from other companies and introduced new products, such as Ace bandages or other products?

A. The company frequently licenses technologies to access new products capability.

Q. Okay. And that's just been part of the

business of the company over time?
A. Yes, sir.
Q. Now, how does Becton Dickinson develop a product? How -- how do you take an idea, a concept, and take it through the process to market? How does that work with the engineers?
A. The -- the company has a -- it's called -- it was referenced in some of the documents. It actually used to be called Pace in the documents I saw this morning, but it's a product development cycle, and they form teams, and they take people from marketing and quality and manufacturing and R&D, and they form teams, and those small groups work with customers, particularly nurses, IV therapists, whatever the business might be, gathering all the customer information they can about what's needed, what am I trying to build, what do I have to deliver on, and then they go into product development, meaning engineers are doing design work, manufacturing people are figuring out how to make it, quality people are setting the quality assurance criteria to make sure what goes out the door meets the expectation, and then there's always -- as the product moves along, you engage the sales and marketing organization, who will be responsible to take that out and educate nurses, physicians, and so forth on how the

products work and can help them deliver healthcare.

Q. So it's basically a team effort.

A. It's a team effort.

Q. Now, you told us that from time to time, Becton Dickinson even licenses technology from other companies, correct?

A. Yes, sir.

Q. And with respect to what we've been talking about in this case, did Becton Dickinson ever license technology from a company called Med-Design?

A. Med-Design?

Q. Yes, sir.

A. Yes, sir.

Q. And when approximately was that; do you remember?

A. That would have been sometime in approximately the year 2000 or 2001, if my memory is correct.

Q. All right. And to your knowledge, has -- and that was a license, as opposed to an acquisition; is that correct?

A. That was a license.

Q. And to your knowledge, has Becton Dickinson ever paid a lump sum license?

A. I have never done a license or seen one at BD that was a lump sum license.

Q. And why is a shared royalty approach, if you take a license, in your view, a better approach?

A. Well, historically, if there's a new technology -- and this applies primarily to new technologies, unique technologies -- there's usually an acknowledgment on the part of the company that has the technology, and of course, the company that they're looking to partner with that like any new product, there's going to be some risk, so sharing the risk and trying to construct a deal that can benefit both parties, if everything goes well, is kind of a natural way to go.

It's the way the healthcare industry tends to operate because of the focus on new ideas and improvements and things like that.

Q. Is it more or less a shared risk, if you will?

A. It is very much a shared risk.

Q. All right.

MR. BECK: I'd like to bring up on the screen very quickly a number of exhibits, and let's -- it's Exhibit -- Defendant's Exhibit 289, 290, 291, 292, and 293.

And so that the jury might know, Your Honor, these are all licenses relating to syringe technology.

Q. (By Mr. Beck) And these licenses -- and the jury will have an opportunity to look at these documents in more detail, if they'd like, but these licenses are licenses BD has entered into with respect to syringe technology, and none of those involve a lump sum license, do they?

A. No, sir.

Q. All right. Now, let's move a little bit further along in the development.

Does Becton Dickinson, because of the size of the company, frankly, receive unsolicited submissions from people and companies all the time?

A. I -- yes, we do.

Q. All right. And has it -- is it so common that you-all have set up a special procedure within the company to kind of handle these unsolicited submissions?

A. Yes. We get a pretty good number of those, and there is process.

Q. All right. And just generally, what is that procedure that you-all have set up?

A. Very briefly, if you have a new idea, you send it to the business development group at the company. They review your product. They then ask you for a nonconfidential sample of the product. The sample is reviewed. It's shown then to the business or the people

that would be working on that product.
And then if there's interest in that product, they will create a confidential disclosure agreement to protect both parties as you go into more detailed discussion.
And that -- oh, I'm sorry. It's called a CDA, but that confidential disclosure agreement is designed to restrict both parties as to what they can or would talk about related to the new idea.
Q. And why do you have that procedure?
A. Well, it protects both parties. It protects somebody that has a new idea, because then we can't take their idea and expand upon it or do anything different, and then it also protects us.
Because, remember, we're seeing lots of ideas. We may have seen a similar idea come in from somebody else, you know, a couple of weeks ago or a couple of years ago.
So it gives us a chance to right away then say, you know, we're going to or we're not going to go forward.
Q. And generally speaking, what -- what do you-all look at to decide or determine whether or not you purchase or license a product?
A. Typically, it's the scope and the impact of

the technology. If there's belief that the idea or the technology could help in a very broad way across the company, maybe across more than one product line, you would and make an effort to acquire that type of technology.

If you think it's more of a narrow application that may just make a product improvement or it may possibly give you a new entry into a new space, you would -- you would take a license agreement.

Q. All right. Now, I want to talk about needlestick injuries. The jury has heard a lot about needlestick injuries, and that clearly was a problem in our country, was it not, and elsewhere in the world?

A. Oh, yes, sir.

Q. And is that something Becton Dickinson was aware of and was trying to address?

A. Well, yes, sir.

Q. Were a lot of other people, RTI and a lot of other people in this country and in the world trying to address that issue?

A. Yes, sir.

Q. All right. Now, I want to talk a little bit about how BD's safety products fit into your overall business. And I want to talk -- let's go back to the timeline.

All right. We talked about the Safety-Lok in 1988. We've talked briefly earlier about October 1992, the Safety-Lok blood collection. And things are changing as more and more information is obtained; is that correct?

A. Yes. In that period from -- particularly from '96 to 2000 -- our timeline is just kind of typical of what you would have seen in the industry. There were many new safety products emerging from many different directions.

Q. All right. And let's talk a little bit about the SafetyGlide which went on the market in June of 1996 from Becton Dickinson. What was that intended to address?

A. That was also for application in primary injections for hypodermic use. The SafetyGlide was a next generation product. It did attach to a syringe and allowed the nurse or the physician to activate the safety-engineered portion of the product with just a little easier use.

Q. All right. And was that intended, among other things, to address needlestick injuries?

A. Certainly, it was.

Q. How?

A. It -- it had a hinged component to the product. When you had completed the injection, the nurse or the physician just pushed up on the hinge, and then that hinge put a cap over the top of the needle that had just been used for the injection.

Q. All right. As time went on, did more and more tension begin to be focused on safety, and in particular, needlestick injuries?

A. Yes, sir. As I was describing that period between '96 and 2000, even the United States media, television, newspapers, magazines were really gaining interest in the needlestick risk and starting to publish.

Q. All right. And what steps did Becton Dickinson take to try to improve the safety of healthcare workers as time moved on?

A. Well, we did a number of things internally. We had created a -- for example -- as one example of that, we created a global safety leadership team back in the late '97-'98 timeframe.

We organized all of our key product lines that had safety offerings into a single team so that we could pull together an educational package to help our customers around the world understand what we could bring to help them with the needlestick issue.

Now, this included blood collection, IV

catheters, and hypodermic syringe and needle area. And these people were working together on a safety leadership team to try and get the right ideas and educational materials out particularly in the U.S., but also into -- primarily into western Europe.

Q. All right. Now, were you personally -- were you personally the lead person with respect to the Safety-Lok blood collection safety product?

A. Yes, sir, I was.

Q. Were you personally -- did you have the lead on the development of the Eclipse needle?

A. Yes, sir, I did.

Q. Did you personally have the lead on both of the Integra products?

A. I was very actively involved, yes, sir.

Q. And did you have the lead on the contact activated Lancet that we see over here in May of 2006?

A. Yes. I left diagnostics in 2006 at the time that it was launched. I had to work -- of course, these products, as you already know, they take a couple of years to develop. So it takes you awhile to get them to market.

Q. Okay. Now, you told the jury that there are different time periods, and so let's start now with '96.

Now, in 1996, did Becton Dickinson form what is called a global safety leadership team?

A. Yes, sir. That was my earlier role.

Q. And what was the purpose of that?

A. The purpose of that, we were trying to recognize that a lot of the customers, particularly the hospitals, were confused by the things that were starting to change and the recognition that they needed help with education and also needed a broader array of product for various types of risk of needlestick injury.

So we collectively put people together from multiple business units so that they could collaborate and not just speak simply about hypodermic or simply about IV catheters or just about blood collection but to work collaboratively.

So instead of showing up at the hospital and three, four, five different people trying to explain it to a couple of key nurses at the hospital, we went in and said, look, you can -- you can learn all about all of these products at one time.

Q. All right. When did Becton Dickinson first consider a retractable -- an automatic retractable syringe?

A. The automatic retractable concept had been talked about, and, you know, we had seen many product ideas in that period of particularly '95, '96. And the

'96 to 2000 timeframe was a very active timeframe for many different types of different products, but particularly for retractables.

Q. All right. In the early 1990s, that's where you had a manual retractable design, correct?

A. That was the earlier drawings that we saw.

Q. Were you-all satisfied with that?

A. No, sir. Those did not meet the expectations of any nurse or doctor.

Q. Why not?

A. The -- the rigor and the multiple steps required to eliminate the risk of needlestick were not going to work.

Remember that people using these -- sometimes you can be in the emergency room at 2:00 o'clock in the morning. You can be in intensive care at -- you know, at midnight, and somebody's really sick.

You can't be manipulating in multiple steps a product of that type. You need something that's more intuitive and easier to utilize.

Q. All right. And so as far as what Becton Dickinson was looking for in a spring-based automatic retractable syringe, you had done market research, correct?

A. Yes. There were three things.

Q. All right. Have you remembered what the third one was yet?

A. I have.

Q. Okay. What was -- what is that?

A. There was another important criteria that we had learned over a period of many years, and you've heard the term it's dead space, and it means trying to eliminate any excess medication being left in the syringe.

A lot of these medications -- not all of them, but many of these medications are very, very expensive, and so hospitals, particularly hospital administrators, challenged us for years and years and years on syringes, to do a better job of eliminating medication waste.

So it was dead space, it was manufacturability, and it was a detachable needle. And we had set up kind of a hurdle that said we've got to get all three of those things or we may not have the right product.

Q. All right. In laymen's terms, does dead space mean the amount of liquid left in the syringe after the full injection is given?

A. That is an accurate definition.

Q. So you're basically wasting medicine.

A. Yes.

Q. All right. And that was of concern to the hospitals for obvious reasons, including cost.

A. Yes, sir.

Q. All right. Now, with respect to the three criteria you were told -- told us about, one of which is the dead space, the other one is affordability and being able to manufacture, and the third one was what?

A. The detachable needle.

Q. Detached needle.

All right. And why -- the detached needle, was that something that you were getting feedback from your healthcare workers?

A. Yes. I can give you some more background. Early -- early in the mid-1990s, there had been some early proposed legislation. And for example -- by the way, these were well intended ideas.

One of the ideas had been, from the government, that we're going to put a tax on any conventional syringes, syringes that are used without a safety product.

So when that was proposed, hospital administrators immediately came -- a couple of them actually came to see us, and they said you guys better wake up. I'm not going to pay this tax, and you better educate the government that 60 percent of the syringes I use in my hospital are not used with a needle. And I've got to have a way to access an IV catheter, so you've got to go to work on this.

Another early proposed idea was that, you know, we'll just eliminate the availability of conventional syringes. And that just got the same response.

Now, the issue, again, was around the hospital, the physician, and the nurses' concern that hey, wait a second, over half the time, I'm using a syringe, I'm using them without a needle, so you have to work with us to provide a product where I can use a needle and where if -- those occasions where I do not use a needle, I don't want to be grasping for two or three different products.

Q. All right. So here we are. We're in 1996 forward. You've got this criteria that you're looking for based upon what the healthcare workers are telling you, and we're talking about the detached -- detachable needle, we're talking about easy to manufacture, and we're talking about affordability, which is cost, correct?

A. That's cost.

Q. All right. Now, did there come a time when you were contacted by someone acting on behalf of RTI who wanted to talk to you about an idea or a concept or a design or a product, whatever you want to call it, sometime after 1996?

A. I was personally contacted by a gentleman, Mr. Jack Page.

Q. And approximately when was that, if you recall? I realize it's been about, what, 10 or 11 years ago.

A. It would have been sometime around the early '98 timeframe, I believe.

Q. All right. And basically, tell the jury about that. I know you may not remember the details, but...

A. A very professional gentleman called me on the telephone. He was an associate of a Mr. Richard Hanselman. Mr. Hanselman had been on our board, so they were, I guess, associates or colleagues of some type.

But he had picked up the phone and called me asking if there was a possibility that RTI could work with Becton Dickinson.

Q. All right. And eventually, what was the decision?

A. Well, eventually, it took some period of time, but Mr. Cowan communicated back to him that we had made a decision that we would not be interested in working with RTI.

Q. All right. And in fact, you have learned, have you not, that RTI contacted Johnson -- I mean, contacted Becton Dickinson several times, correct?
A. Yes, sir.
Q. All right.
MR. BECK: If we could bring up DX332, please.
And so that the jury can see this, this is a letter in June of '96 from Mr. Frank Buono, who's the director of new product suggestions, to Thomas Shaw simply saying: Thank you for your signed nonconfidential agreement and submitting your invention along with two samples to us for evaluation.
We are forwarding your disclosure to our appropriate people for consideration. We expect to have an indication of preliminary interest within 60 days or sooner, at which time we will advise you.
Let us bring up Plaintiff's Exhibit 99, please.
Q. (By Mr. Beck) Plaintiff's Exhibit 99 is a letter dated November 11th, 1997, to Mr. Thomas Shaw from Jon Bell. And you know Mr. Bell, do you not?
A. Yes, sir, I do.
Q. All right. And it says: Mr. Shaw, we have carefully reviewed the merits and potential of the

VanishPoint syringe and have concluded that Becton Dickinson does not wish to pursue acquisition of your product.

Given our significant investment in providing safer hypodermic needles over the last 10 years, we do not see the significant enough advantages, in terms of performance or cost, to justify the investment needed to successfully market VanishPoint.

And then you thank him for his interest in Becton Dickinson and thanked Lillian Salerno, and then it says: If you or your company developer come across other medical devices, I hope you'll again consider us, correct?

A. Yes, sir.

Q. Why did Becton Dickinson reject that? You understand that it's become a very successful product.

A. Yes, sir, I do.

Q. Tell the jury why you-all rejected that back in 1997.

A. In 1997, we were very much committed to the criteria that I mentioned earlier. We really wanted a detachable needle on our product. We really wanted a very low dead space. And we were very focused, as we always have been, on low cost manufacturing and ease of manufacturing.

And as we looked at all outside ideas, those were the first three things that we tried to test them up against. Our engineers went right to those three criteria as soon as they saw a new idea.

Q. Okay.

MR. BECK: And then if we may bring up Defendant's Exhibit 314, please.

Q. (By Mr. Beck) The jury saw that briefly, I believe, in Mr. Bratic's testimony, but this is a letter dated June 23rd, 1999, to Mr. Jack Page, again, management consultant from Dallas.

It says: While I thank you for your interest, I do not think our doing so would be appropriate with the best interest of BD and its customers or shareholders, correct?

A. Yes, sir. I had followed up with Gary since I had made the initial contact to make sure that we closed the loop with Mr. Page.

Q. All right. I just want to briefly refer to a couple of internal documents so the jury can kind of see what was going on inside the company during this time period.

The jury has seen this document, I believe, during the opening statement of the Plaintiffs in this case.

MR. BECK: Let's bring up Plaintiff's Exhibit 87.

And if we may show the first paragraph: Evaluations of the following submissions were completed, if we may show this so the jury can see it.

Q. (By Mr. Beck) It says: Evaluations of the following submissions were complete.

Can you see that, Mr. Kozy?

A. Yes, sir, I can.

Q. Okay. And it refers to the VanishPoint from RTI, and it also refers to a company called Zero-Stik; is that correct?

A. That company was called NMT, and Zero-Stik was the name of their product.

Q. Okay. And so here you have this group within Becton Dickinson that says it has evaluated those two.

MR. BECK: And if we may turn over to the second page.

Q. (By Mr. Beck) This is the summary. It is felt that neither of these technologies could be produced at a lower cost than a SafetyGlide combo or a Safety-Lok combo and that significant R&D -- that's research and development -- and capital investment would be required to market such products.

Unless either of these products were seen to be significantly more attractive in the marketplace, it doesn't seem like either is worth pursuing further, given the typical retractable technology drawbacks, although these both are some of the best embodiments of the concept.

So, basically, you got Mr. Bell and this team, at least as of this date, saying they don't think that Becton Dickinson ought to pursue either any -- anymore, correct?

A. That is correct.

Q. Let me show you another document, and this specifically is Plaintiff's Exhibit 94, and this is during the same general time period in July 28, '97.

The jury can see the time period we're talking about here. Subject VanishPoint Retractable Syringes.

It says: On Monday, July 28th, '97, a brief discussion about the VanishPoint retractable syringe took place.

And without going into the specifics --

MR. BECK: If we may turn to the page ending in 192.

Q. (By Mr. Beck) It talks about drawbacks. And with the three criteria in mind, could you explain to the jury why, at least according to this document, the group that was looking at this did not believe that the

VanishPoint, at the time, satisfied the criteria that you were talking about.

A. Well, they were -- the first bullet is referencing, of course, the detachable needle concept and the concern that they had it was not removable.

And then the remaining comments here are around the ease of use, which was also high on our list. These engineers had assessed that the activation mechanism was not so obvious.

MR. BECK: Let's turn now to Defendant's Exhibit 105.

Q. (By Mr. Beck) So, eventually, as the jury has seen, the decision was made, a judgment call at the time, that you believed that the company should go in a different direction, as opposed to VanishPoint or this other company that you identified as NMT.

A. Yes, sir.

Q. All right.

MR. BECK: Let's bring up Defendant's Exhibit 105.

THE COURT: Mr. Beck, before you do this, maybe this is a convenient stopping point for our afternoon break.

MR. BECK: Good, Your Honor.

THE COURT: We'll be in recess for 15 to

20 minutes.

MR. BECK: Thank you.

COURT SECURITY OFFICER: All rise.

(Jury out.)

(Recess.)

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

You may continue your examination.

MR. BECK: Thank you, Your Honor.

Q. (By Mr. Beck) Did you eventually become aware of a company called Saf-T-Med?

A. Yes, sir, I did.

Q. And what was Saf-T-Med?

A. Saf-T-Med was a startup organization that had contacted Becton Dickinson through a retired employee, expressing interest.

Q. Retired employee of who?

A. Of BD.

Q. All right.

A. Wanting to show us their new product idea.

Q. And what was the former employee's name?

A. Mr. Noah Gresham was the name of the BD employee.

Q. And what was your understanding at the time of what Saf-T-Med was? I mean, what was it? A company?

A. It was a very, very early-stage company, very small. They had depicted themselves as a startup organization, just a couple of people and some technologies and prototype products.

Q. All right. And does the name Kern McGary and Bill Jentzen come to mind at all?

A. Well, if after these couple of days, yes.

Q. Now, what did you understand the product was or the idea or concept was that Mr. Noah Gresham had called to your attention?

A. Mr. Gresham had called me and his only comment was that, as an advisor to that company, he was suggesting, since it was an interesting, new retractable design, that the company should take -- BD should take a very close look at the product.

And he asked me, as someone that he knew personally, to see if the company would be interested in taking a look at that product.

Q. And did the company, BD, eventually take a look at that?

A. Yes, the company did take a look.

Q. All right.

MR. BECK: Let's bring up Defendant's Exhibit 105.

Q. (By Mr. Beck) Which is an e-mail to John Lowry from Jon Bell. And tell the jury who these two individuals are, please.

A. John Lowry was the Vice President of R&D at the time, and Mr. Jon Bell was the lead engineer on assessing retractable product technologies.

Q. Okay. And if we may focus just on the first paragraph here where he says: I completed a preliminary evaluation of the Saf-T-Med sample to determine exactly how it works and render some opinion of my impression versus other spring-loaded retracting technology we've looked at.

After examining the product visually and under the microscope, as well as downloading a copy of their patent, I know exactly how the product works. It's pretty straightforward. I like the product. Of the products I've seen of this nature in the past, example, VanishPoint, Zero-Stik, Med-Design, et al, I've always felt that VanishPoint was the best embodiment.

SafetyGlide's still the best, but I'd go as far as saying that I would now give Saf-T-Med product the edge.

Correct?

A. Yes, sir.

Q. Why did you decide, BD -- why did BD decide to

acquire Saf-T-Med?
A. Well, Mr. Bell went forward with his comments there. You can see the bullet below. He comments that it's a DN; that's his description of a disposable needle, which means that it's a detachable needle. So that was important to him, and he knew that was a criteria that mattered to us.
In the other bullet below, he's commenting on the -- on the components and the number of components. And remember that one of the other important things to us was, can we make this and can we really make it affordable and at a high quality.
Q. All right. Now this we're talking about, what, the fall of 1998 at this point?
A. This is dated September, '98.
Q. And so we're moving into that second time period that you told us about on your timeline, correct?
A. Yes.
Q. All right.
MR. BECK: Now, I want to -- before I start talking about additional contact with Saf-T-Med, let's bring up Plaintiff's Exhibit 138. And I want to look at the first page so the jury can see what it is, and then I want to turn to a specific page.
Q. (By Mr. Beck) This is a document, an internal

BD document, entitled, Retracting Needle Syringe Design Review, Product Concept and Design, June 24, 1999.

So we've moved a little bit further into the timeline, correct?

MR. BECK: And if we may turn to page ending in Bates No. 2992, please.

Q. (By Mr. Beck) You see what is referred to as design matrix?

A. Yes, sir.

Q. Could you explain to the ladies and gentlemen of the jury what that means?

A. This was a document that's designed to assist the engineers in the product development process, to making sure that everyone had a common understanding of several of the things that we were trying to do here.

So that first column, you can see the heading: What do -- did we have to do. You can see it starts, then, to describe beneath it the product.

And then it starts to explain how did we do it. What could stop us was the third column over. So that they're identifying anything that are potential risks or could be a barrier to moving forward, and then trying to call out any other steps that need to take place.

And this is putting the product through a design assessment and how it would stack up against the things that we need to do.

Q. All right.

MR. BECK: If we can go to the next Bates page number. And I specifically want to refer to the last item on there.

Q. (By Mr. Beck) If you can explain that to the ladies and gentlemen of the jury.

A. I remember it quite well.

Q. What does that mean, please?

A. This is the reference to the -- to the dead space, and it must have capabilities that were similar or less than we had in our products now.

We had learned over the years that we just didn't have any flexibility on this. Particularly, physicians and purchasing agents were not very tolerant of us bringing a product that wasted medication.

Q. Okay.

MR. BECK: And if we may look at the Bates number ending in 2996, please.

Q. (By Mr. Beck) Where it talks about the product must be safe after disposal; product must activate on the first attempted actuation; the product must inspire confidence that the safety feature will protect the needle.

These are all aspirations that you had with respect to whatever product you were developing with respect to an automated retractable syringe?

A. This is typical of those criteria, expanding on the criteria so that our engineers and our product development team had a very clear goal of what they're trying to do.

Q. All right. Now, back to Saf-T-Med. You talked to Mr. Gresham. He alerted you to an idea or a product or a concept that Saf-T-Med had.

Did there come a time when you personally met with a man by the name of Jim Erbs?

A. Yes, sir. I was -- I was transitioning to a new role at the exact time this was going on, but I had indicated to Mr. Gresham that I would make sure that a meeting got arranged and I would communicate with Mr. Erbs.

And then as a courtesy, on his first visit, to meet him. I would make sure he met the right people. But I was in a different role and -- and that's the commitment I -- I did make.

Q. All right. And did you eventually learn that your engineers were actually excited about the Saf-T-Med syringe concept, idea, product, whatever you want to call it?

A. Well, everybody learned about this real fast, because we had been looking for a number -- a number of years. And this was the first time we had had a larger group of people, many more than a couple, express interest in a product design and configuration. So there was a lot of enthusiasm.

Q. All right. And did you believe at the time you were eventually close to making a decision, that it met the three main criteria you told the jury about?

A. That was our understanding, yes.

Q. Low dead space, for example?

A. Low dead space. We clearly had looked for that.

Q. Changeable needle?

A. We already talked about the detachable needle, and we liked the fewer parts as the earlier document had outlined.

Q. All right.

MR. BECK: Let's put up DX32, please.

Q. (By Mr. Beck) I'm showing you --

MR. BECK: No, that's not -- that's the wrong one. Is it DX32?

I need to put up the Saf-T-Med syringe, please.

Q. (By Mr. Beck) While they are looking for that, let's kind of move on a little bit.

How did -- how did Becton Dickinson evaluate the Saf-T-Med concept or design or whatever you want to call it?

A. The engineering team, particularly the team that was led by Mr. Bell, took the lead in working directly with Saf-T-Med to look at their patents, to look at their product drawings and designs, to look at their other improvement ideas, and to gather as much information as we could on a non-confidential basis with them about what the potential of the product could be.

Q. All right. You've told the jury you were somewhat involved in that, but you were transitioning over to manufacturing.

A. I had turned Mr. Erbs over to this -- to the medical group, the hypodermic needle and syringe group. And Mr. Bell and his team, under the guidance of Mr. Cohen, took the product concept forward.

MR. BECK: And if we can -- this is DX31.

Q. (By Mr. Beck) And is this what eventually became -- let me just ask -- this is the Saf-T-Med syringe, which is set forth in the patent belonging to Mr. McGary and Mr. Jentzen, correct?

A. Yes, sir.

Q. All right. Now, when was the Saf-T-Med

purchase completed, to your knowledge?
A. I believe approximately June of '99, in the early summer of '99.
Q. All right. And you were shown a couple of documents, and I want to refer the jury to a paragraph that was not called to their attention.
MR. BECK: Let's bring up Plaintiff's Exhibit 119, please.
Q. (By Mr. Beck) Remember being shown this document, which is a memorandum to the Executive Committee dated January 12, 1999?
A. Yes, I do.
MR. BECK: Let's refer to the page ending in Bates No. 434.
And if we can focus on the second paragraph and blow it up so the jury can see it.
Q. (By Mr. Beck) And you understand this is the Executive Committee material that focused on the decision about whether to acquire Saf-T-Med or not.
A. Yes, sir, I understand.
Q. All right.
MR. BECK: Let's see if we can blow up that second paragraph so we can see what the Executive Committee of the company is being told back in -- on January 12, 1999.

Can we blow -- it won't blow up?

Okay. I'm told it won't blow up.

Q. (By Mr. Beck) So let's see if I can read it. Looks like Saf-T-Med's first product -- let's see if I can read it here.

Saf-T-Med's first product is a patented, disposable, low dead space, retractable hypodermic device that has almost the same appearance and feel of conventional syringes.

Saf-T-Med's device has addressed the most significant negative issues related to existing retractable hypodermic devices, and thus has the potential to be cost-competitive with existing conventional devices.

Let me stop right there. Is that referencing these three criteria you told the jury about earlier?

A. Yes, sir.

Q. Then it goes on: Saf-T-Med's device works in the following way. At the end of an injection, pressure on the plunger causes the used needle to fully retract into the body of the syringe, and those -- I can't read that word -- the possibility -- eliminates -- eliminates the possibility of an accidental needle injury.

Because of the --

A. Mere passive.

Q. -- mere passive nature of this device and its apparent manufacturability, it is seen as a major threat to Becton Dickinson's 280 million North American hypodermic business.

Now, does that paragraph convey to the Executive Committee the criteria that you outlined for the jury that you were looking for in an automated retractable syringe?

A. Yes, sir, it does.

Q. And is that something that you would have agreed with at the time?

A. Yes, sir, I would have.

Q. Now, the ladies and gentlemen of the jury have also seen an appropriation request, and that is something you personally signed, correct?

A. This is the document earlier today of $66 million?

Q. That is correct.

A. Yes, sir, I did sign it.

MR. BECK: If we can bring that up, Plaintiff's Exhibit 159.

Q. (By Mr. Beck) And I guess we can see your name on there.

See your name on there, Mr. Kozy?

A. Yes, sir, I do.

Q. And I take it you signed it because you were in favor of this.
A. Yes, I was.
Q. All right.
MR. BECK: Now, if we can go back to the first page.
Q. (By Mr. Beck) And this appropriation was for what amount?
A. This appropriation was for $66 million.
Q. For each new product that Becton Dickinson sells, do you have to make changes in the molds that manufacture that device, the equipment that helps to manufacture that device, and even sometimes the buildings that help to manufacture those devices?
MR. BOWLES: Objection, leading, Your Honor.
THE COURT: Mr. Beck, if you will --
Q. (By Mr. Beck) Tell the ladies and gentlemen of the jury what changes have to be made with respect to manufacturing.
THE COURT: Ladies and Gentlemen, you have heard a few objections during the trial, and I haven't really explained about leading. And that's generally a question that calls for a yes or no answer when essentially a witness is on direct and this witness

is called -- I won't try to go through all the rules as an adverse witness, but Mr. Bowles could lead him, but Mr. Beck cannot.

Sometimes I will allow leading; other times I don't, depending on the nature of the question.

So so much for the Rules of Evidence.

Mr. Beck, if you will try to avoid leading.

MR. BECK: I have forgotten my question, Judge.

THE WITNESS: Me, too.

MR. BECK: Another senior moment.

THE COURT: My response was much too long, but I wanted to educate the jury a little.

They've been hearing that term.

Q. (By Mr. Beck) After Becton Dickinson decides, for example, to manufacture a new product, tell the jury from a manufacturing perspective what you have to do and whether money is needed to do it.

A. I think you have to recognize that on any new product, whether it's a product we build or it came from the outside, whether you're trying to take a product and the R&D engineers are handing it to the manufacturing engineers, you might think that they're all going to agree with each other and never have any discussion.

For us at least, it very rarely works that way.

There has to be a lot of back-and-forth dialogue about how you want to design the part, how are you going to make the part, how many do you expect to make, how fast.

So there's -- there's lots and lots of dialogue. And I think to the point of the question, there's always changes to those products. It never comes perfect out of Research & Development. And I'm not sure even if it did, manufacturing would not be comfortable with it. They've just got to make sure it's right to run on the machine.

Q. All right. And does that involve sometimes changing machines or buying new machines?

A. Well, if it's a new product, very rarely would you try and make it on existing machines. And if it includes significant new and different technologies, you would -- you would not be able to make that product on your existing machines.

This was a very different product for -- for our company and our plant.

Q. All right. And we've shown here on this appropriation, it says: Capital funds of $66.4 million are requested to establish the manufacturing capability and automated production of spring-based safety syringes.

Now, what does that mean? What's the 66 million going to be used for?

A. What -- what this team is asking for is to put in all the production capacity to be able to make this product and bring it to market.

The $66 million includes -- if my memory is right, it's about $20 million to make the needle. That's the detachable needle that's going to go on the top of the syringe. And as the document will articulate, that was going to be made in Nebraska, which is one of our technology centers for needles.

It included another 45 million approximately, okay, to make the retractable syringe, and that was going to be made in Canaan, Connecticut, which was our manufacturing technology center for small-sized syringes.

So the 66 was being allocated to two different manufacturing locations to scale up production of this product.

Q. And would those expenditures have been necessary regardless of which technology you purchased from which company, some form of similar expenditures?

A. It was a brand new product. Yes, you would have to do that with any new product.

Q. All right. Now, was the Saf-T-Med product or design or concept ready to be manufactured when Becton Dickinson purchased it?

A. No, sir.

Q. All right. And tell the ladies and gentlemen of the jury whether or not any changes had to be made to make it consistent with the criteria of manufacturability and affordability?

A. I'm not an engineer, and I couldn't bring you the very specific details of those changes, but there was significant work done on the parts and how the parts would interface. There are always discussions on the size of the parts, particularly the tolerances. And then there were very important discussions about the molding, making sure you get each of these parts molded right.

So essentially every piece, particularly on the syringe, was looked at closely.

Q. All right. Did you want to keep the detachable needle that was part of the Saf-T-Med syringe?

A. Yes, we did. The detachable needle was less prone to change.

Q. Did you want -- did you want to keep the low

dead space component that you had?
A. Those were criteria that we had to have as the earlier documents pointed out.
Q. And did you want to keep the sharp metal cutter which cut through or penetrated internal parts of the syringe to activate retraction?
A. Well, that was one of the attractive things of the product that was different.
Q. All right. Now, did you-all look -- the jury's heard about how VanishPoint contacted BD at least two times during the '90s. They heard how you looked at Saf-T-Med and heard how you looked at Med-Design, and they heard how you looked at others.
Are there yet even other companies and other technologies that you looked at when you're doing your homework with respect to this automatic retractable syringe that you were looking for?
A. Yes, sir.
Q. Tell the jury approximately how many and just give the jury some examples.
A. An approximation would be somewhere in the five to ten range. A couple of those you already saw in the documents. NMT, the company from England, was an example of another product we looked at. We had seen other ideas. They weren't as good or nowhere near as

attractive as this one.

Q. All right. And I think you told us already, but the Integra syringes are manufactured where?

A. Integra syringes are made in Connecticut.

Q. All right and what do you do in Nebraska?

A. In Nebraska, we make the detachable needle.

Q. Now, do you still manufacture the Integra 1mL syringe?

A. No, sir we do not.

Q. Why not?

A. That market never developed. We had -- we had thought and had projected that there would be a 1ml market, but our sales, our revenue was never realized.

Q. So despite what you may have thought back when you made decisions in 1999, it never really materialized?

A. Well, making business projections is one of the hardest things that we have to do. It's -- it's a little easier maybe in years one, two, and three. But when you try and predict years, you know, like four through ten, it's gets very difficult to do. And we clearly did not get that one right.

Q. And tell the jury about the 3 -- Integra 3mL, how is that done?

A. Integra 3mL has not met the revenue

expectations either. That's another example of where the market to date has just not been realized. It just didn't grow the way that we had hoped.

Q. All right.

MR. BECK: If we can put the timeline up again, please.

Q. (By Mr. Beck) I just have a few more questions, Mr. Kozy, and then I'm finished.

I want you to tell the jury why it is that -- well, first of all, do Becton Dickinson's other safety products outsell the Integra product, particularly the --

A. You're referencing the SafetyGlide and the Eclipse --

Q. Yes, sir.

A. -- and the Safety-Lok?

Q. Yes, sir. Yes, sir.

A. Yes, sir, they do.

Q. And what is your understanding of the primary reason for that?

A. There are a couple of reasons. You can see we have an array of products. And different customers just have different choices for the type of product that they want. I can't always explain that, but different people like different things.

And then secondarily, not to be lost in this, is that the other products are at much lower cost. And so the high prices associated with the retractable technology in the Integra we had prevented us from selling more.

Q. All right. The Eclipse, for example, can you give the jury some idea of what the cost of that is?

A. It's somewhere -- to a hospital, it would be somewhere in that 16-, 17-cent range, something like that.

Q. All right. And the retractable syringe is in what price range?

A. Tends to be more in the -- the retractable would tend to be more in the 35- to 38-cent range for us.

Q. So you're talking about approximately twice as high?

A. A little bit more than twice.

Q. Okay. Now, you understand, do you not, Mr. Kozy, that RTI is accusing your company, Becton Dickinson, of copying their technology?

You understand that's what their allegation is in this case?

A. Yes, sir, I understand.

Q. I want you to look at the jury and you tell them whether or not you-all have done any copying of RTI's technology top, side, or bottom.

A. We have not nor did we ever have any intention to copy that product.

Q. Thank you.

MR. BECK: Thank you, Your Honor. That's all I have.

THE COURT: Re-examination.

MR. BOWLES: Very little.

Could we have just a second here, Your Honor?

(Pause in proceedings.)

MR. BOWLES: Your Honor, we may be going into something -- I may be going into something that would involve the protective order. So what I could do is go to the other two things, and then that will be --

THE COURT: Why don't you -- if you want to go into the protective order issue first, we can ask everyone to step out, or you can let us know when you're going into it, whatever your preference is.

MR. BOWLES: Thank you, Your Honor. If I could just do it -- I will do it last. See how this goes.

REDIRECT EXAMINATION

BY MR. BOWLES:

Q. Mr. Kozy?
A. Yes, sir.
Q. As I understand the Becton Dickinson criteria for products, I understand it to be a detachable needle, low dead space, and low cost.
Is that -- is that the criteria that you told Mr. Beck about?
A. The manufacturability included the quality as well as the low cost, yes, sir.
Q. Very well.
On the detachable needle, the Integra came in the 3ml and the 1ml size; is that correct?
A. Yes, sir.
Q. And then you discontinued the 1ml, I think, last year; is that right?
A. I believe that you're right. I know the -- the equipment was -- was treated by the accountants this year, in the year 2009.
Q. Late last year or early this year?
A. That must be right.
Q. And until it was discontinued, did the 1ml have a detachable needle?
A. No, sir.
Q. Are you familiar with the World Health Organization?

A. Yes, sir.
Q. WHO?
A. Yes, sir.
Q. Are you familiar with an organization called PATH, P-A-T-H?
A. PATH? What does that stand for?
Q. The Program for Appropriate Technology and Health.
A. Yes, sir, I am.
Q. All right. Do you understand that changing needles is not a World -- World Health Organization recommended practice?
A. I'm not familiar with that, no, sir.
Q. All right.
MR. BOWLES: Braden, could we go to Exhibit 266, please?
Q. (By Mr. Bowles) This is a series of e-mails, and I would like to go -- and one of the e-mails attaches a document --
MR. BOWLES: Braden, if you could go to 43, which should be four pages back. It's called Evaluation of a Retractable Syringe in South Africa.
Q. (By Mr. Bowles) And, Mr. Kozy, when I say 493, that's the last three numbers.
A. Thank you, sir. I do have it.

Q. You do have that.
A. Yes. I've got it. Thanks.
Q. Have you ever seen this document before?
A. No, sir, I haven't.
Q. All right. It is attached to a BD-produced document in this case. Actually, I think it is forwarded to Bob Odell or Robert Odell. Do you know who he is?
A. Yes, sir. He just retired from the company. I do know who he is.
Q. Okay. So you've known him a long time?
A. Yes, sir.
Q. All right. And it also includes as a carbon copy a woman named Renuka Gadde. Do you know Renuka Gadde?
A. Yes, sir, I do.
Q. All right. I'm not interested in the e-mails. I'm interested in the PATH report that's entitled Evaluation of a Retractable Syringe in South Africa: Acceptability, Safety, and Cost Implications KwaZulu Natal, South Africa, September 2007.
Have you ever seen that document before?
A. I have not.
Q. Interestingly, this is a study which used as its prototype a VanishPoint syringe. Are you aware of

the PATH study in South Africa where the device that was used was a VanishPoint syringe? Were you familiar with that at all?

A. No, sir, I'm not.

Q. All right. Well, let's go to -- and you're going to have to go quite a few pages in. And please take your time, if you want to, to get the context of the report, but it's a report on reducing needlesticks in South Africa.

And it's long, and there are evaluation standards, and then there are conclusions. And if you look at Page 527, last three numbers, 527 --

MR. BOWLES: You got it, Braden?

VIDEO TECH: Yes, sir.

MR. BOWLES: Go to probably the -- it looks like probably the third full paragraph, Stemming from -- right there. Blow that up.

Q. (By Mr. Bowles) The authors -- this is a PATH report, so PATH states: Stemming from the habit within KZN -- that's KwaZulu Natal -- facilities of using two needles for each injection, one concern reported with retractable syringe use was inability to change the needle after drawing the medication.

Nurses reported being taught to change needles between drawing a dose and giving an injection to protect the patient from pain and infection.

Consequently, concerns over patient comfort and safety are to be expected with the fixed -- needle retractable syringe.

However, in two independent studies in Australia and the U.S., researchers found no significant difference in pain levels or adverse effects, parenthesis, abscess, fever, crying, or injection-site tenderness, end parenthesis, associated with injection between fixed-needle and two-needle injections.

And then it says: Changing needles is not a WHO, which is World Health Organization, recommended practice.

Do you see that?

A. Yes, sir.

Q. Do you disagree with the fact that changing needles is not a WHO recommended practice?

A. Sir, I have to admit to not being a developing world expert. I know Ms. Gadde really is. I couldn't comment on the WHO practice here, but I do see the document.

Q. And Ms. Gadde is a Becton Dickinson employee?

A. Yes, sir, she is.

Q. All right. On -- let me talk to you just for a minute on dead space.

I think you just said, in response to one of Mr. Beck's questions, that the Integra is outsold by the other safety devices of BD; for instance, the Eclipse, the SafetyGlide, the Safety-Lok, and I guess the conventional syringe.

Is that -- is it fair to say that Eclipse SafetyGlide, Safety-Lok, and the conventional syringe, as an aggregate, a vast majority more of those products are sold than Integra?

That is a terrible question. I don't know if you can answer that.

A. I think I know what you're getting at.

Q. Thank you.

A. I'll give it another try here.

Q. I need help.

A. If you would try it again, it would help for me to try to clarify.

Q. Okay. I just want to know, in relationship to Integra, do the conventional syringes of the Safety-Lok, SafetyGlide, and Eclipse, do they sell a lot more of those products?

A. In BD?

Q. BD, yes.

A. Do all the other products sell more than Integra?

Q. Yes, sir.
A. Yes, sir, they do.
Q. Okay. Are you aware that the RTI VanishPoint product has lower dead space than the BD conventional syringe?
A. No, sir.
Q. Are you aware that the RTI VanishPoint product has lower dead space than the Safety-Lok?
A. No, sir, I'm not.
Q. Are you aware that the VanishPoint product has lower dead space than the Safety-Lok?
A. No, sir, I'm not.
Q. And are you aware that the VanishPoint product has lower dead space than the Eclipse?
A. No, sir, I was not aware of that data.
MR. BOWLES: At this point, Your Honor, we should clear the courtroom.
THE COURT: Those that have not signed or are not subject to the protective order need to step out, hopefully, for the final time today.
MR. BOWLES: From my standpoint.
(Courtroom cleared.)
(REPORTER'S NOTE: The testimony is filed under seal. Sealed Section 2.)
THE COURT: Let's bring back in the

courtroom those that had to leave.

(Audience comes back into the courtroom.)

THE COURT: You may call your next witness.

MR. BOWLES: Your Honor, we would like to exercise our right for a five-minute --

THE COURT: Interim statement?

MR. BOWLES: Thank you.

MR. CARROLL: If the Court please, Your Honor.

Ladies and Gentlemen of the Jury, I am going to take five minutes, with the Court's permission, to tell you what I have heard over the last three days. I've been listening just like you've been listening, and I wrote these points down.

Point No. 1 is wow. Remember on Monday when Ms. Duesman used that word wow to describe her reaction when she saw the Shaw technology the first time?

You now know, as of this morning, that BD had the same wow when they saw it. Remember the folks on the video you heard this morning, and they said the reaction is wow.

So that confirms to you that this is, in fact, a big deal, a big deal.

So the second phrase I wrote down -- and I'm not an engineer -- is calf rope. And that's what the folks over at BD said when they finally realized they couldn't do what Shaw had done. They couldn't do what Shaw had done. They gave up. They said, we can't do it.

And instead, what did they do? They went shopping. They went shopping. Where did they go? They went to Saf-T-Med, and they spent 17 million bucks and another 50-some-odd million bucks committed to that project, more than 80 million bucks to get into the market that they felt like they were going to be forced to get into by the government, 80-something million bucks to buy a company with three employees.

And what happened? They bought a lemon. They bought a lemon. Why do I say that? You remember one of the BD folks you heard this morning testify? I believe it was a Mr. Davis. I wrote his name down. I'm sorry, Mr. Carter. Good-looking young fellow.

He testified that they changed not some, not most, but every single piece of the Saf-T-Med design, every one. Now, that's a company that admitted they couldn't do it. They bought this company, and they changed everything.

And this segues into the comments that

the BD folks made today about the Manhattan project. Remember, that was their term. They borrowed it from 1944, '45, when we, America, was trying to invent an A-bomb.

And remember what -- and that's a very appropriate term, because remember what happened in the Manhattan project? We invented the A-bomb, and the Russians stole it, because they couldn't do it, right? And we say that's exactly what -- and their analogy is perfect, their literary allusion is perfect, because that's what happened in this case. And how do we know that?

Because you heard testimony, when -- when Judge Folsom had to excuse everybody who wasn't subject to the secrecy rules, we know what? They're still shopping. They're still shopping.

So if, in fact -- now, that -- they're still shopping, because we've sued them, and we're in here trying to stop them from stealing our technology. That's why they're still shopping in 2008, in 2008.

Now, the last little point I have down here is crocodile tears. Let me tell you what I mean by that. You heard a lot of testimony about how committed BD is to making a safe needle.

All we make is a safe needle. You just

saw a document that said that at the time we're talking about, that 92 percent, 92 percent of what they made and sold was dangerous; 92 percent of what they made and sold was dangerous.

And that leads me back -- Ms. Martin, would you turn on the machine, please, ma'am?

THE COURT: Mr. Carroll, your time is up.

MR. CARROLL: I beg your pardon, Your Honor. Thank you. I will sit down.

THE COURT: Any reply time?

MR. BECK: Yes, sir, if I may have just about two minutes.

This case is not about whether somebody bought a lemon or whether somebody made a bad business decision 10 or 12 years ago. This is a patent infringement case.

And the evidence we believe shows that good people with good intentions back in the 1990s tried to come up with new safety technology, and over time they did, and it kept changing over time. It kept improving over time. It kept getting better over time.

And that's exactly what Becton Dickinson is doing when they're supposedly, quote, still shopping. We are going to continue to shop for new ways to improve products, for new ways for safety, and there's nothing wrong with that.

This is an infringement case. That's what this case is about. And at the end of the day, you're going to have to make that decision.

Thank you, Your Honor.

THE COURT: Thank you.

You may call your next witness.

MR. BOWLES: Your Honor, the Plaintiff rests.

THE COURT: Very well.

Ladies and Gentlemen of the Jury, the Plaintiff has finished its case, Mr. Shaw's case. So at this point in time I need -- for me to take some matters up outside the presence of the jury, and rather than bring you back to start a witness for maybe five or ten minutes, we're going to let you go for the day, and we'll continue to work, and we'll see everyone tomorrow morning.

Just recall my previous instructions in all regards. Thank you.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Mr. Beck, Rule 50 motions?

MR. BECK: Yes, sir. We have here Becton

Dickinson's motion --

MR. CARROLL: You want me to move my deal?

THE COURT: Why don't you move that.

MR. CARROLL: I'll be glad to.

MR. BECK: -- motion for judgment as a matter of law.

And, Your Honor, I have a copy of it in writing to hand to the Court. I'm going to give one to your clerks.

THE COURT: Mr. Beck, I trust you're not going to read it to us.

MR. BECK: No, sir. I figure that this is the best way to do it.

And if I may just confer with counsel for just a moment.

(Pause in proceedings.)

THE COURT: Actually tried one of these recently, Mr. Beck. I won't mention the case, because it would be easy to determine who the lawyer was. But his Rule 50 motion went on so long, I decided I was going to have to put time limits on those.

So I trust -- unless you're going to read it, that it won't be --

MR. BECK: No, sir. We're not going to

do that.

There's actually two documents, Your Honor. One is the motion that I mentioned, and then there's the additional document that accompanies it that has to do with the damage issue, which is all part of our motion for judgment as a matter of law.

THE COURT: So you just want me to read it or --

MR. BECK: No, sir. I mean, we're --

THE COURT: Obviously, if I'm going to rule on it now, I'm either going to have to read it or hear from you on it, one of the two.

MR. BECK: Well, I mean, basically, Your Honor -- I didn't know how you wanted to do this, whether you actually wanted to discuss this now or not, but I'm not going to read it to the Court.

I mean, basically --

THE COURT: All the -- sort of all the normal grounds for a motion for new trial?

MR. BECK: Yes, sir. It's non-infringement. The 3mL Integra has to do with the Court's construction of retainer member and no friction holding force.

THE COURT: Certainly, on the issue of non-infringement, I'm going to deny that motion.

I trust there's one on willfulness?

MR. BECK: Yes, sir. There is one on willfulness in here.

THE COURT: Which I see as a much closer case, but I'm inclined to see what the jury does, and I can always visit this post-trial. So I'll deny that motion.

MR. BECK: All right. And then, Your Honor -- and there's also the issue of withdrawn claims, which presents an issue under the federal rules. RTI has withdrawn or is attempting to withdraw Claim 36 of the '733 patent and Claim 47 of the '224 patent, and its proposed stipulation purports to withdraw those claims only for the purpose of this trial, which means that they can assert them elsewhere at another time.

And our position is very simple. We've counterclaimed for declaratory judgment on all of the infringement issues.

THE COURT: Well, Mr. Beck, that certainly sounds like an issue of law that I can take up at a later date. Basically, you're saying that they're forever precluded.

MR. BECK: They've either got to dismiss them with prejudice, or we're entitled to a declaratory judgment on them, basically.

MR. HARDIN: Your Honor, we have -- there's a lot of claims in this case that -- Your Honor, this comes back to the limitation of the claims at issue.

THE COURT: Well, I think the issue that I, obviously, allowed the parties to go forward, or the Plaintiff, are on 10 claims. So I guess my issue was this part of the 10 claims that has later been dismissed or --

MR. HARDIN: This is part of the 10 claims to further narrow the issues for trial today.

THE COURT: Little different issue. But I trust you gentlemen agree I could take this up probably post-trial on briefing and maybe hear arguments. I don't see particularly any need to address this today for the purpose of this trial.

MR. BECK: And that's fine, Your Honor. We just wanted to highlight it for the Court.

THE COURT: I've never -- I've never been presented with this issue. Certainly, I take the position those claims, in addition to the 10, are severed out for a later day. And you don't, I'm assuming, dispute that.

MR. BECK: No, sir.

THE COURT: These are claims that have

been dismissed from the 10, that you feel they shouldn't be able to try them later.

MR. BECK: Right.

THE COURT: Let's take this up by briefing later.

MR. HARDIN: Thank you, Your Honor.

MR. DAWSON: Your Honor, can I briefly address the damages motion?

THE COURT: Yes.

MR. DAWSON: It's our view that the damage model that was presented by RTI is legally deficient. As the Court knows, in a hypothetical negotiation, you go to the date of infringement.

And there's case law that was cited to you in our papers that says that the start of infringement is when both the patent has issued and the accused products were sold.

And as we pointed out in Mr. Bratic's cross-examination, his hypothetical negotiation is in May of 2000. And there's two problems with that.

First of all, two of the patents had not issued, and so it doesn't meet the legal standard that we've set forth.

And with respect to the one patent that had issued, the only product that was even being considered at that time was the 3ml, and they're not saying that the 3ml infringes the '733 patent.

And secondly, there's no evidence in the record before Your Honor that there was any infringement as of May of 2000. So it's the wrong date of infringement.

For those two reasons, it is legally deficient, and it should be set aside.

THE COURT: Counsel, you may have some arguments with merit, but I'm going to deny it at this time. This is something, likewise, I think I can always address post-trial with briefing and an opportunity for response by briefing.

So --

MR. DAWSON: Yes, sir.

THE COURT: -- I'll deny it at this time.

Anything else from a housekeeping standpoint?

Have the parties actually introduced -- Ms. Martin told me the other day that there had never really been an offer of the exhibits.

Has that been done now, Ms. Martin?

COURTROOM DEPUTY: Not in front of the jury, no. We just --

THE COURT: No, not in front of the jury, but have they been admitted into the record?

COURTROOM DEPUTY: Just the preadmitted by Judge Craven.

THE COURT: Very well.

MR. DAWSON: We have a record of what's --

THE COURT: At some point in time, we need both parties -- I mean, if they're not in, don't look frightened to death. I'm going to allow you to open --

MR. BOWLES: It's been a hard day.

THE COURT: -- open it up to introduce those, but at some point in time, the parties need to have a clear list of what exhibits, so I can admit those from a housekeeping standpoint.

Now, Mr. Keyzer -- and I'm going to say has a first draft of a jury charge, and I've used this in three or four or five cases, so my guess is, with some refinement -- you've probably had a chance to see this. I haven't looked at it closely.

But look at it overnight, and I want your appellate lawyers, your instruction lawyers to be here tomorrow morning about 8:30, and I'd like to hear -- as I said yesterday, I'm going to give everyone an opportunity to formally go on the record at the appropriate time.

But I've found, through these informal conferences, that a lot of these jury charge issues can be worked out.

So if you'll have no more than a couple attorneys a side here by 8:30 to give us sort of your initial comments. It's not going to be anything formal or last very long. Won't be on the record.

We just like to hear your comments about -- we believe we have all the theories in and all the defenses, but if we've left out something, I'm sure you'll call it to our attention, or maybe better yet, we put in something that is no longer in the case, just generally your comments about are we on the right track to an appropriate charge in this case.

So why don't you pass those out.

MR. BECK: Your Honor, do you want us to address tomorrow what Judge Ward calls the heartburn issues?

THE COURT: I don't know if I know what the heartburn issues are.

MR. BECK: You know, just the substantive-type issues, no editing-type issues.

THE COURT: Well, just generally your comments. This is, like I said, nothing real formal, just generally be able to tell us, Judge, no, we don't think this should be in or this in. Maybe heartburn is the correct term. I haven't used that, but that sounds appropriate.

Anything else from a housekeeping standpoint?

MR. CARROLL: Judge, just one question.

Are you going to send anything other than the jury questions back with them? Are you going to give them the charge?

THE COURT: I give them the charge. Unlike Judge Ward, I give them the charge.

MR. DAWSON: Do you charge before closing or after?

THE COURT: Before. So you don't have to go through the fiction of saying, I anticipate the Judge will say so and so. I will charge the jury and give them a copy of the charge.

Judge Ward and I differ on philosophy on that. I don't know whether either one of us is right or wrong, but I gave them a copy of the charge.

Anything else?

What -- how much time remains, Ms. Martin?

COURTROOM DEPUTY: RTI has 2 hours and 1

minute, and Becton Dickinson has 7 hours.

THE COURT: So we have about 9 hours and 5 minutes, which is pretty well most of two full days.

Do the parties anticipate they are going to use most of that time? You don't have to give away any trade secrets, so to speak.

MR. BECK: No, sir, I don't think we're going to be using our full time, at least I hope not.

THE COURT: What do we expect from BD tomorrow, before I forget that?

MR. DAWSON: I think it's Chad Smith, an engineer, followed by Dr. Sibbitt, an expert, followed by Mr. -- Erbs is second. I'm sorry. Mr. Erbs, the Saf-T-Med guy, is second; expert, Dr. Sibbitt; and then a damages expert, Dr. Magee.

THE COURT: Any realistic thoughts on how long that's going to take by way of maybe your direct portion?

MR. DAWSON: I would think -- I'm guessing about an hour for Chad Smith; probably about two hours or so for Sibbitt; Erbs is fairly short; I would think, less than an hour and 15 minutes on both; and then Magee maybe 45 minutes.

THE COURT: I haven't been adding all that up. I guess what I'm trying to determine, is there any realistic hope we might finish the testimony tomorrow?

Because they don't have but 2 hours and 1 minute left by way of cross-examination.

MR. DAWSON: I would -- my best guess is we would finish Friday morning.

THE COURT: Spill into Friday?

MR. DAWSON: Friday morning. And I would hope that -- we can talk about it internally. I hope that we can close Friday. I'm not sure if we can get a verdict Friday, but I would hope that we can close Friday.

THE COURT: We'll have a real good feel tomorrow morning by the end of the day where we are on the testimony and is it realistic.

How much time are the parties requesting for closing?

MR. DAWSON: We were hoping for 45 minutes.

MR. BOWLES: 45 minutes.

THE COURT: I think that's reasonable.

You may -- I sure wouldn't give you much more than an hour, but I'll give you 45 minutes a side. And don't come back and say we want the hour.

This charge will take at least 45 minutes to read, so real quickly that's going to take some time to complete the charge and the closing.

So like I say, we'll have a much better feel tomorrow afternoon. I know everyone would like to finish this, and I'm sure the jury is number one on the list for Friday. Of course, we have no way of knowing how long they would take.

But if they go out Friday, I'll stay as late as they want to and let them come back Saturday, if they want to. I'm pretty well very democratic about the jury sort of determining the schedule when it goes to the jury, because they're the ones giving their time to do this.

We'll make those decisions in part. A lot is also going to depend on how much disagreement we have about the jury charge, because we can have it put together. But we'll know more about that tomorrow morning.

Very well.

Mr. Bratic, if you'll please come around.

Have a seat.

MR. BRATIC: Thank you.

THE COURT: Mr. Bratic, I apologize for keeping you around all afternoon. I don't know if you were planning on leaving.

But I want to ask you this: Did you bring to the attention of the court reporter in the presence of the security officer that your intent was to go very fast on direct examination and then sort of slow play it on cross to use the other party's time?

MR. BRATIC: No, Your Honor. I was making light and making a joke.

THE COURT: Making a joke. A bad joke, Mr. Bratic.

MR. BRATIC: Apparently so. I apologize, but, no, I was kidding, because --

THE COURT: Well, let me assure you I didn't know about that before we had that exchange during the noon hour, but let me assure you that what I saw before the noon hour would confirm that bad joke, because it was quite apparent to me you were not -- you're an expert witness, and you know how expert witnesses should conduct themselves.

And it was very apparent to me you were being as difficult as possible for the -- Mr. Dawson to pry an answer from you. And, you know, you weren't giving answers; you were giving speeches. And I just don't allow that type of conduct in my Court.

Now -- and I'm not going to conduct a mini trial to determine if that was a bad joke or a factual statement, but if I thought it was a factual statement, you would probably be receiving a show-cause order from me to see why your privilege to practice as an expert witness in this -- my Court and perhaps the district should not be revoked.

You understand that?

MR. BRATIC: I do, Your Honor.

THE COURT: And it is a privilege to practice in this Court as an expert witness.

MR. BRATIC: I understand.

THE COURT: And like I said, I don't want to conduct a mini trial at this point, and I'm not going to, but I will -- I'll -- if I feel it's appropriate to pursue this more, you'll be receiving a show-cause order.

But in the future, I would suggest, if, in fact, it was a bad joke, you not use such bad judgment in the future.

MR. BRATIC: I understand, Your Honor.

THE COURT: Very well.

MR. BRATIC: I apologize.

THE COURT: Well, your apology also should be to Mr. Dawson and this jury, and I'm inclined almost, but I won't do that, make you apologize in front of the jury.

I gave you an instruction not to -- to listen to the question, to respond -- you totally ignored it, Mr. Bratic. And I'm not used to being required to tell expert witnesses or any witnesses a second time what I expect in my court.

MR. BRATIC: I understand, Your Honor.

THE COURT: Well, you'd better.

We'll be in recess.

COURT SECURITY OFFICER: All rise.

(Court adjourned.)

* * * * * *

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_______________________ ____________________
SUSAN SIMMONS, CSR Date
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

/s/___________________ ________________
JUDITH WERLINGER, CSR Date
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10